TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 243

LYDIA BRADLEY, PLAINTIFF IN ERROR,

vs.

H. W. LIGHTCAP.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MARCH 23, 1903.

(18,874.)

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a UNITED STATES OF AMERICA, *ss:*

To H. W. Lightcap, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Illinois wherein Lydia Bradley is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the hand and seal of the honorable the chief justice of the supreme court of the State of Illinois this 27th day of February, in the year of our Lord one thousand nine hundred and three (A. D. 1903).

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

b [Endorsed:] Original 846 No. Supreme Court of the United States Lydia Bradley plaintiff in error *vs.* H. W. Lightcap defendant in error Citation to the Supreme Court of the United States.

I have served this writ within my district by reading the same to and in the presence and hearing of the within named H. W. Lightcap, at the same time delivering to him personally a true copy thereof, on the 4th day of March A. D. 1903.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

1 service	2.00
8 miles	48
	2.48

c In the Supreme Court of Illinois.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2880. Appeal from Fulton.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the fifth day of March, in the year of our Lord one thousand nine hundred and three, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of the said supreme court, this fifth day of March, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable the justices of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said plea and suit between Lydia Bradley, appellant in said supreme court of Illinois and H. W. Lightcap, appellee in said supreme court of Illinois; the said suit being an appeal from the circuit court of Fulton county Illinois in a certain action of ejectment in which said H. W. Lightcap was plaintiff and said Lydia Bradley was defendant; wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution treaty statute or commission; a manifest error hath happened to the great damage of the said Lydia Bradley, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, the 27th day of February, in the year of our Lord one thousand nine hundred and three. (1903.)

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk of the Circuit Court of the United States for the Northern Dist. of Illinois, Seventh Circuit.

Allowed to operate as a supersedeas, by
BENJ. D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

e [Endorsed:] Copy. Supreme Court of the United States. Lydia Bradley plaintiff in error *vs.* H. W. Lightcap defendant in error. Writ of error. Copy deposited for defendant in error. Copy deposited for the defendant in error in the clerk's office, U. S. circuit court, northern district of Illinois. Copy deposited for the defendant in error in the clerk's office of the supreme court of Illinois, at Springfield, Illinois, *also*.

UNITED STATES OF AMERICA, } *ss:*
Seventh Judicial Circuit, Northern District of Illinois, }

I Marshall E. Sampsell, clerk of the United States circuit court in and for said seventh circuit and northern district of Illinois do hereby certify that in the cause wherein Lydia Bradley is plaintiff in error and H. W. Lightcap is defendant in error more fully described in the within and foregoing copy of writ of error, a true copy of the writ of error issued by me on the 27th day of February A. D. 1903 (and of which the within and foregoing copy of writ of error is also a true copy) was on the 5th day of March A. D. 1903 deposited in my office in Chicago for the defendant in error.

In witness whereof I have hereunto set my hand and affixed the seal of said United States circuit court for the northern district of Illinois, this 5th day of March A. D. 1903.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

f UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said plea and suit between Lydia Bradley appellant in said supreme court of Illinois and H. W. Lightcap appellee in said supreme court of Illinois; the said suit being an appeal from the circuit court of Fulton county Illinois in a certain action of ejectment in which said H. W. Lightcap was plaintiff and said Lydia Bradley was defendant;—wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the

title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Lydia Bradley as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of February, in the year of our Lord one thousand nine hundred and three (1903).

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk of the Circuit Court of the United States for the Northern Dist. of Illinois, Seventh Circuit.

Allowed to operate as a supersedeas by
BENJ. D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

g [Endorsed:] Supreme Court of the United States. Lydia Bradley plaintiff in error *vs.* H. W. Lightcap defendant in error Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S. circuit court, northern district of Illinois. Copy deposited for the defendant in error in the clerk's office of the supreme court of Illinois at Springfield Illinois also.

h In the Supreme Court of Illinois.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2880. Appeal from Fulton.

I, Christopher Mamer, clerk of the supreme court of Illinois, do hereby certify that on the fourth day of March, in the year of our Lord one thousand nine hundred and three, a copy of the foregoing writ of error for the defendant in error, was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said supreme court, this fifth day of March, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHISTOPHER MAMER.
Clerk of Supreme Court.

i In the Supreme Court of Illinois.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2880. Appeal from Fulton County.

I, Christopher Mamer, clerk of the supreme court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages numbered from 1 to 413 both inclusive contain a true, perfect and complete copy of the record and of the assignment of errors and of all proceedings in the said case had in said court, and that pages 414 to 452 both inclusive, contain a true and correct copy of the assignment of errors upon said record filed in said court on the 4th day of March, A. D. 1903, the original of which remains on file in said court. And I have annexed and transmit herewith a copy of the opinions filed in said case which are contained in the following pages, 383 to 401 inclusive.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed at Springfield, Illinois, this fifth day of March, in the year of our Lord one thousand nine hundred and three.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a supreme court, begun and held at Springfield on Tuesday, the second day of December, in the year of our Lord one thousand nine hundred and two, within and for the State of Illinois.

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general, Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit: on the third day of December, A. D. 1902, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Fulton county in a certain cause entitled Lydia Bradley *vs.* H. W. Lightcap, which said transcript of record is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Fulton, }

Pleas before the Honorable Jefferson Orr, one of the three judges of the sixth judicial circuit of the State of Illinois, and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the nineteenth day (being the third Monday) of August, in the year of our Lord one thousand eight hundred and ninety five.

Present: Honorable Jefferson Orr, judge. P. W. Gallagher, State's attorney. J. D. Breckenridge, clerk. James M. Laws, sheriff.
Attest: J. D. BRECKENRIDGE, *Clerk.*

Court opened by proclamation.

And be it remembered that heretofore, to-wit:—on August 12, A. D. 1895, the following transcript of proceedings was filed herein, in the words and figures following, that is to say

"UNITED STATES OF AMERICA, } ss:
State of Illinois, Mason County, }

In the Circuit Court, August Term, A. D. 1895.

Pleas before the Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois, and presiding judge of the circuit court of Mason county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Havana Mason county, on the first Monday, being the 5th day, of August, in the year of our Lord one thousand eight hundred and ninety five, and of the Independence of the United
3 States the one hundred and twentieth.

Present: Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois. S. A. Murdock, State's attorney, *pro tem.* Wm. M. Duffy, clerk. A. A. Brooker, sheriff.
Attest: WM. M. DUFFY, *Clerk.*

At which term the following proceedings were had, viz:

H. W. LIGHTCAP } No. 700. Ejectment.
vs.
WM. MARTIN & T. J. REYNOLDS. }

And now on this day comes the plaintiff by Wallace & Lacey and H. W. Masters, his attorneys, and also comes the defendant, by W. W. Hammond and John W. Pitman, *his* attorneys, and the de-

fendant- by *his* said attorneys enter a motion for a rule on the plaintiff to give security for costs, which motion is allowed by the court, and afterwards, to-wit: on the same day E. A. Wallace and Lyman Lacey, Jr. — and enter themselves as security for costs herein.

And afterwards, to-wit, on the 7th day of August, A. D. 1895, the following order of court was made and entered of record, which is in words and figures following, to-wit:

H. W. LIGHTCAP
vs.
WM. MARTIN & T. J. REYNOLDS. } No. 1698. Ejectment.

And now on this day again come the respective parties to the above entitled cause by their respective attorneys, and the defendant- petitions the court to grant to *him* a change of venue from the presiding judge, and after listening to the arguments of counsel for the respective parties it was ordered by the court that the venue be changed and by agreement of the respective parties hereto, the venue is changed to the circuit court of Fulton county, Illi-
4 nois, and the clerk of the court is hereby directed to certify and transmit the records and papers as the law directs.

Petition for Change of Venue.

STATE OF ILLINOIS, } ss:
Mason County, }

Circuit Court of said County, August Term, A. D. 1895.

H. W. LIGHTCAP
vs.
WM. MARTIN & T. J. REYNOLDS. } No. 1698. Ejectment.

To the honorable — of said court:

The defendant- respectfully petitions your honor to grant a change of venue in this cause to some other court — competent jurisdiction, to wit: to the circuit court of Fulton county, and for cause for said change petitioner respectfully shows:

That this suit is brought to recover possessions of and establish title to valuable lands in this county, worth at least forty thousand dollars. That the real owner and present occupant of said premises, by her tenants, is Lydia Bradley. That the plaintiff in this cause has received a conveyance of said land for a nominal consideration as *a* petitioner is informed and believes he holds the same for the use and benefit of Mess. Wallace & Lacey, the attorneys of record herein, and it is understood and agreed between plaintiff and his

attorneys that if they are successful in establishing title to and recovering possession of said lands he will convey the title to them. The plaintiff is the father-in law of said E. A. Wallace. The petitioner shows that said E. A. Wallace & Lacey are the real parties in interest in this cause and will derive the substantial benefits of success therein. Your petitioner further shows that said Lyman Lacey, Jr., one of the said firm of Wallace & Lacey is the son of the Hon. Lyman Lacey who is now presiding judge of this court, and before whom this cause would come on for hearing if tried in the usual order of business of this court.

JOHN E. YOUNG.

STATE OF ILLINOIS, } ss:
Mason County, }

J. E. Young being duly sworn on oath states that he has heard the foregoing affidavit read, and has signed the same, and that the statement- therein made, of his own knowledge are true, and as to the statements made upon information and belief he verily believes the same to be true.

JOHN E. YOUNG.

Subscribed and sworn to before me this 7th day of August, A. D. 1895.

WM. H. DUFFY, *Clerk.*

It is hereby stipulated that this petition shall stand as a petition for each of the defendants in causes Nos. 1699, 1700 and 1702 and the same order made in 1698 shall be made in each of the three cases above mentioned.

WALLACE & LACEY,
Att'y- for Pl'ff.
JOHN W. PITMAN,
Att'y for Def'ts.

I, Wm. M. Duffy, clerk of the circuit court of Mason county, in the State of Illinois, aforesaid, do hereby certify that the above and foregoing is true, perfect and complete copy of the record and proceedings and petition and affidavit for change of venue in a certain cause lately pending in said court, on the law side thereof, wherein H. W. Lightcap was plaintiff and Wm. Martin and T. J. Reynolds were defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Havana, this 10th day of August, A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*

(Filed August 12. 1895.

J. D. BRECKENRIDGE.
Circuit Clerk.)

6 (*Copy of Declaration.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, August Term, A. D. 1895.

H. W. Lightcap of the city of Havana in the county of Mason and State of Illinois plaintiff in this suit, by Wallace & Lacey his attorneys, comes and complains of Wm. Martin and T. J. Reynolds of the county of Mason and State of Illinois defendants, who are summoned according to the form of the statute in such case made and provided in a plea of ejectment.

For that whereas, the said plaintiff was on the first day of July in the year of our Lord one thousand eight hundred and ninety-five possessed of a certain parcel of land with appurtenances, situated in the said county, and known and described as follows, to-wit:—The north-east quarter of the south-east quarter of section twenty two (22) township twenty-three (23) north range six (6) west of the third (3) principal meridian. Which said premises the said plaintiff claims in fee and the said plaintiff being so possessed thereof the said defendants afterwards, to-wit: on the second day of July in the year of our Lord one thousand eight hundred and ninety five entered into the said premises and ejected the said plaintiff therefrom and unlawfully withhold from the said plaintiff the possession thereof, to the damage of said plaintiff of twenty four hundred ($2400) dollars, and therefore he brings suit, etc.

WALLACE & LACEY,
Attorneys for Plaintiff.

(Filed this 13th day of July, 1895.

WM. M. DUFFY, *Clerk.*

Filed August 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

Copy of Summons and Endorsements Thereon.

7 STATE OF ILLINOIS, } ss:
Mason County. }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon William Martin and T. J. Reynolds if they shall be found in your county personally to be and appear before the circuit court of said county, on the first day of the next term thereof, to be holden at the court house in Havana in said

Mason county, on the first Monday of August 1895, to answer unto — in an action of ejectment to recover possession of the following described premises, viz: a certain — with the appurtenances, situate in *tract of land in* said county, and known, designated and described as follows — and to the damage of said plaintiff as he says in the sum — twenty four hundred dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, Wm. M. Duffy, clerk of said court, and the seal thereof, at his office in Havana, in said Mason county, this 13 day of July, A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk*."

(Endorsements.)

"STATE OF ILLINOIS, }
Mason County. }

I have duly served the within by reading the same to the within named T. J. Reynolds this 23rd day of July, A. D. 1895 as I am therein commanded. William Martin this 15 day of July, A. D. 1895.

A. BROOKER, *Sheriff.*
J. S. SANDRETH,
Sheriff Bailiff."

"STATE OF ILLINOIS, }
Mason County, } ss:

I do hereby appoint J. S. Landreth as my special deputy to serve the within writ.

This 16 day of July 1895.

A. A. BROOKER, *Sheriff.*

STATE OF ILLINOIS, }
Mason County, } ss:

I have duly served the within by reading the same to the within named defendant T. J. Reynolds this 23rd day of July 1895.

J. S. LANDRETH.

Subscribed and sworn to before me this 24 day of July 1895.

C. J. HAMILTON, *J. P.*"

Copy of Pracipe.

STATE OF ILLINOIS, } ss:
Mason County, }

In the Mason County Circuit Court, August Term, A. D. 1895.

In the Matter of H. W. LIGHTCAP, Plaintiff,
vs.
WILLIAM MARTIN and T. J. REYNOLDS, Defendants. } No. 1700.

To Wm. M. Duffy, Esq., clerk of said court:

You will please issue a summons in the above entitled cause, directed to the sheriff of said Mason county, in a plea of ejectment returnable at the August term of said court, A. D. 1895, to the damage of the plaintiff of twenty-four hundred dollars.

Dated the 13th day of July, 1895.

WALLACE & LACY, *Att'ys.*

Issued as requested July 13, 1895.

WM. M. DUFFY, *Clerk.*

(Filed July 13th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed August 12, 1895.

J. D. BRECKENBRIDGE,
Circuit Clerk.)

(*Plea of General Issue.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court, to the August Term, A. D. 1895.

H. W. LIGHTCAP
vs.
WILLIAM MARTIN and T. J. REYNOLDS. } Ejectment.

And the defendants by John W. Pitman, their attorney, come and defend the wrong and injury, when, etc., and say that they are not guilty of unlawfully withholding the said premises claimed by the plaintiff, in manner and form as alleged in said declaration, and of this they put themselves upon the country, etc.

By JOHN W. PITMAN,
Their Att'y.

8 And the plaintiff doth the like:

By WALLACE & LACEY, *His Att'ys.*"

(Filed August 6th, 1895.

WM. M. DUFFY, *Cl'k.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Affidavit for Security for Costs.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court, at the August Term, A. D. 1895.

H. W. LIGHTCAP
vs. } In Ejectment.
WILLIAM MARTIN and T. J. REYNOLDS.

John W. Pitman, after being duly sworn, under oath states that he is attorney for the said defendants, William Martin and T. J. Reynolds, in the above entitled cause, and that he knows the said plaintiff, H. W. Lightcap, that said plaintiff is the head of a family and residing with the same, in the city of Havana in said county, that said plaintiff has no real or personal property over and above the exemptions allowed to him by law, and is unable to pay the costs of this suit and that such costs cannot be collected of him by execution or fee bill, so as to endanger the officers of this court in respect to their legal demands. And this affiant further says that he has reason to believe that in case said suit is prosecuted to a conclusion a judgment will be rendered against said plaintiff for said costs.

JOHN W. PITMAN.

Subscribed and sworn to before me this 6th day of August, 1895.

WM. M. DUFFY, *Clerk.*

(Filed August 6, 1895.

WM. M. DUFFY, *Cl'k.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Stipulation as to Common Source of Title.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

9 H. W. LIGHTCAP
vs.
WILLIAM MARTIN and J. T. REYNOLDS. } Ejectment.

It is hereby stipulated and agreed by and between the plaintiff and the defendant- in the above entitled suit that the plaintiff and the defendant claim and derive their respective titles to the land in controversy *for* a common source that Benjamin S. Prettyman on the eighth day of October, A. D. 1867 became and was the owner of the land in controversy in fee simple by title *described* of record from the United States of America and that the title- of the respective parties to this suit are claimed and derived through him the said Benjamin S. Prettyman and that he is the common source of title.

WALLACE & LACY AND
H. W. MASTERS,
Attorneys for Plaintiff.
W. W. HAMMOND &
JOHN PITMAN,
Att'ys for Defendants."

(Filed August 7th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

10 (*Copy of Affidavit of Common Source of Title.*)

11 STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP
vs.
WILLIAM MARTIN and J. T. REYNOLDS. } Ejectment.

H. W. Lightcap, being first duly sworn on oath, states, that he is plaintiff in the above entitled cause and that the plaintiff in the

said cause claims title to the land in the controversy through a common source with the defendants, that on the eighth (8th) day of October, A. D. 1867, one Benjamin S. Prettyman became and was the owner of the lands in controversy in fee simple and that the plaintiff and the defendant derive their respective titles to the lands in *in* controversy through the said Benjamin S. Prettyman.

H. W. LIGHTCAP.

Subscribed and sworn to before me this 7th day of August, A. D. 1895.

WM. M. DUFFY,
Circuit Clerk.

[SEAL.]

(Filed May 24, 1902. J. C. SEVERNS,
Circuit Clerk.)

12 And be it remembered that afterwards to-wit: on August 20th, A. D. 1895, the following among other proceedings were had and entered of record in said court, in the words and figures as follows, that is to say:

H. W. LIGHTCAP
vs.
WILLIAM MARTIN. } Ejectment.

And now on this day comes the plaintiff herein by his attorneys and moves the court for leave to substitute Lydia Bradley as defendant in this suit, which said motion is allowed by the court, and by consent of the parties the right of trial by jury in this cause is hereby waived.

13 And be it remembered that heretofore, to-wit: on August 12th, A. D. 1895, the following transcript of proceedings was filed herein in the words and figures following, that is to say.

"UNITED STATES OF AMERICA,
State of Illinois, Mason County, } *ss:*

In the Circuit Court, August Term, A. D. 1895.

Pleas before the Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois, and presiding judge of the circuit court of Mason county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Havana, in said county, on the first Monday (being the 5th day) of August, in the year of our Lord one thousand eight hundred and ninety five, and of the Independence of the United States the one hundred and twentieth.

Present: Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois. S. A. Murdock,

State's attorney *pro tem.* Wm. M. Duffy, clerk. A. A. Brooker, sheriff.

Attest: WM. M. DUFFY, *Clerk.*

At which term the following proceedings were had, viz:

H. W. LIGHTCAP
vs.
H. J. HOOTMAN. } No. 1702. Ejectment.

And now on this day comes the plaintiff by Wallace & Lacy and H. W. Masters, his attorneys and also comes the defendant, by W. W. Hammond and John W. Pitman, his attorneys, and the defendant by his said attorneys enter- a motion for a rule on the plaintiff to give security for costs, which motion is allowed by the court, and afterwards, to-wit:—on the same day come E. A. Wallace and Lyman Lacey, Jr. and enter themselves as security for costs herein.

14 And afterwards, to-wit: on the 7th day of August, A. D. 1895, the following order of court was made and entered of record, which is in the words and figures following, to-wit:

H. W. LIGHTCAP
vs.
H. J. HOOTMAN. } No. 1698. Ejectment.

And now on this day again come the respective parties to the above entitled cause by their respective attorneys, and the defendant petitions the court to grant to him a change of venue from the presiding judge, and after listening to the arguments for the respective parties, it is ordered by the court that the venue be changed and by agreement of the respective parties hereto, the venue is changed to the circuit court of Fulton county, Illinois, and the clerk of this court is hereby directed to certify and transmit the record and papers as the law directs.

Petition for Change of Venue.

"STATE OF ILLINOIS, } ss:
Mason County,

Circuit Court of said County, August Term, A. D. 1895.

H. W. LIGHTCAP
vs.
H. J. HOOTMAN. } No. 1698. Ejectment.

To the honorable judge of said court:

The defendant respectfully petitions your honor to grant a change of venue in this cause to some other court of competent jurisdiction,

to-wit: to the circuit court of Fulton county, and for cause for said change petitioner respectfully shows:

That this suit is brought to recover possessions of and establish title to valuable lands in this county, worth at least forty thousand dollars: that the real owner and present occupant of said premises by her tenants, is Lydia Bradley. That the plaintiff in this cause has received a conveyance of said land for a nominal consideration and as petitioner is informed and believes he holds the same
15 for the use and benefit of Mess. Wallace & Lacey, the attorneys of record herein, and it is understood and agreed between plaintiff and his attorneys that if they are successful in establishing title to and recovering possession of said lands he will convey the title to them. The plaintiff is the father-in-law of said E. A. Wallace. And petitioner shows that said Wallace & Lacey — the real parties in interest in this case and will derive the substantial benefits of success therein. Your petitioner further shows that said Lyman Lacey, Jr., one of the said firm of Wallace & Lacey, is the son of the Hon. Lyman Lacey who is now presiding judge of this court, and before whom this cause would come on for hearing if tried in the usual order of business in this court.

JOHN E. YOUNG.

STATE OF ILLINOIS, } ss:
Mason County, }

J. E. Young being duly sworn on oath states that he has heard the foregoing affidavit read, and has signed the same, and that the statements therein made of his own knowledge are true, and as to the statements made upon information and belief he verily believes the same to be true.

JOHN E. YOUNG.

Subscribed and sworn to before me this 7th day of August, A. D. 1895.

WM. M. DUFFY, *Clerk.*

It is hereby stipulated that this petition shall stand as a petition for each of the defendants in causes Nos. 1699, 1700 and 1702 and the same order made in 1698 shall be made in each of the three cases above mentioned.

WALLACE & LACEY,
Att'y- for Pl'ff.
JOHN W. PITMAN,
Att'y for Def'ts.

I, Wm. M. Duffy, clerk of the circuit court of Mason county, in the State of Illinois, aforesaid, do hereby certify that the above and foregoing is a true, perfect and complete copy of the record and proceedings and affidavit for change of venue in a certain cause
16 lately pending in said court on the law side thereof, wherein H. W. Lightcap was plaintiff and H. J. Hootman was defend-

ant. In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Havana, this 10th day of August, A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*

(Filed August 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Præcipe.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Mason County Circuit Court, August Term, A. D. 1895.

In the Matter of H. W. LIGHTCAP, Plaintiff, }
vs. } No. 1702.
H. J. HOOTMAN, Defendant. }

To Wm. M. Duffy, Esq., clerk of said court:

You will please issue summons in the above entitled cause, directed to the sheriff of said Mason county, in the plea of ejectment returnable at the August term of said court, A. D. 1895 to the damage of the plaintiff of twenty-four hundred dollars.

Dated the 13th day of July, 1895.

WALLACE & LACEY, *Att'ys.*

Issued as requested July 13th, 1895.

WM. M. DUFFY, *Clerk.*

(Filed July 13, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Summons and Return Thereon.*)

STATE OF ILLINOIS, } ss:
Mason County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon H. J. Hootman if he shall be found in your county, personally to be and appear before the circuit court of said county, on the first day of the next term thereof, to be held at the court house in Havana in said Mason county, on the first Monday of August 1895, to answer unto H. W. Lightcap in an

action of ejectment to recover the possession of the following described premises, viz: a certain — with the appurtenances,
17 situated in *tract of land in* said county, and known, designated and described as follows — and to the damage of said plaintiff as he says in the sum of twenty-four hundred dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, Wm. M. Duffy, clerk of our said court, and the seal thereof, at his office in Havana in said Mason county, this 13th day of July, A. D. 1895.

WM. M. DUFFY, *Clerk.*

(Upon which is the following return or endorsement:)

STATE OF ILLINOIS, }
Mason County. }

I have duly served the within by reading the same to the within named defendant H. J. Hootman this 15th day of July, 1895 as I am therein commanded.

A. A. BROOKER, *Sheriff.*

(*Affidavit for Security for Costs.*)

STATE OF ILLINOIS, }
Mason County, } ss:

In the Circuit Court, at the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } In Ejectment.
H. J. HOOTMAN. }

John W. Pitman after being duly sworn under oath states that he is the attorney for the said defendant, H. J. Hootman, in the above entitled cause and that he knows the said plaintiff, H. W. Lightcap, that said plaintiff is the head of a family and residing with the same in the city of Havana in said county, that said plaintiff has no real or personal property over and above the exemption allowed to him by law, and is unable to pay the costs of this suit and that such costs cannot be collected on him by execution or fee bill, so as to endanger the officers of this court in respect to their legal demand. And that affiant further says that he has reasons to believe and
18 does believe that in case said suit is prosecuted to a conclusion a judgment will be rendered against said plaintiff for said costs.

JOHN W. PITMAN.

Subscribed and sworn to before me this 6th day of August, A. D. 1895.

WM. M. DUFFY, *Clerk.*

(Filed August 6, 1895.

WM. M. DUFFY, *Clk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Declaration.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, August Term, A. D. 1895.

H. W. Lightcap in the city of Havana in the county of Mason and State of Illinois plaintiff in this suit, by Wallace & Lacey his attorneys comes and complains of H. J. Hootman of the county of Mason and State of Illinois defendant, who is summoned according to the form of the statute in such case made and provided, in a plea of ejectment. For that whereas, that said plaintiff was on the 1st day of July in the year of our Lord one thousand eight hundred and ninety five possessed of a certain parcel of land with the appurtenances, situated in said county, and known and described as follows, to-wit: The northwest quarter of the southwest quarter of section twenty-three (23) township twenty-three (23) north, range six (6) west of the third (3) principal meridian. Which said premises the said plaintiff claims in fee and the said plaintiff being so possessed thereof, the said defendant afterwards, to-wit: on the second day of July in the year of our Lord one thousand eight hundred and ninety five entered into the said premises and ejected the said plaintiff therefrom, and unlawfully withholds from the said plaintiff the possession thereof, to the damage of said plaintiff of twenty-four hundred dollars ($2400) and therefore he brings suit, etc.

WALLACE & LACEY,
Att'ys for Plaintiff.

(Filed July 13, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

19 *Plea of General Issue.*

STATE OF ILLINOIS, }
Mason County, } *ss:*

In the Circuit Court, to the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } In Ejectment.
H. J. HOOTMAN. }

And the defendant by John W. Pitman, his attorney, comes and defends the wrong and injury, when, etc., and says that he is not guilty of unlawfully withholding the said premises claimed by the plaintiff in manner and form as alleged in said declaration and of this he puts himself upon the country, etc.

JOHN W. PITMAN, *His Att'y.*

And the plaintiff doth the like.

By WALLACE & LACEY,
His Attorneys.

(Filed August 6, 1895.

WM. M. DUFFY, *Clk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

Affidavit of Common Source of Title.

STATE OF ILLINOIS, }
Mason County, } *ss:*

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } Ejectment.
H. J. HOOTMAN. }

H. W. Lightcap, being first duly sworn, on oath, states that he is the plaintiff in the above entitled cause and that the plaintiff in the said cause claims title to the land in controversy through a common source with the defendant, and that on the eighth (8th) day of October, A. D. 1867, one Benjamin S. Prettyman became and was the owner of the lands in controversy in fee simple and that the plaintiff and the defendant derive their respective titles and claims to the land in controversy through the said Benjamin S. Prettyman.

H. W. LIGHTCAP.

Subscribed and sworn to before me this 7th day of August, A. D. 1895.

WM. M. DUFFY,
Circuit Clerk.

[SEAL.]

(Filed May 24, 1901.

J. C. SEVERNS,
Circuit Clerk.)

(*Agreement of Common Source of Title.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP } Ejectment.
vs.
H. J. HOOTMAN. }

It is hereby stipulated and agreed by and between the plaintiff — in the above entitled suit that the plaintiff and defendant claim and derive their respective titles to the land in controversy *for* a common source that Benjamin S. Prettyman on the eighth day of October, A. D. 1867 became and was the owner of the land in controversy in fee simple, by title deducible of record from United States of America and that the title- of the respective parties in this suit are claimed and derived through him the said Benjamin S. Prettyman and that he is the common source of title.

WALLACE & LACEY AND
H. W. MASTERS,
Attorneys for Plaintiff.
W. W. HAMMOND AND
JOHN PITMAN,
Att'ys for Defendant.

(Filed August 7, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE.
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on August 20, 1895 the same being one of the regular days of said term of said court, the following among other proceedings were had and entered of record in said court, that is to say:

H. W. LIGHTCAP
vs.
H. J. HOOTMAN. } Ejectment.

And now on this day comes the plaintiff herein by his at-
21 torneys and moves the court for leave to substitute Lydia Bradley as defendant in this suit, which said motion is allowed by the court and by consent of parties the right of trial by jury in this cause is hereby waived.

And be it remembered that heretofore, to-wit: on August 12, A. D. 1895 the following transcript of proceedings was filed herein, in the words and figures following, that is to say:

"UNITED STATES OF AMERICA,
State of Illinois, Mason County, } *ss*:

In the Circuit Court, August Term, A. D. 1895.

Pleas before the Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois, and presiding judge of the circuit court of Mason county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Havana, in said county, on the first Monday (being the 5th day) of August, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

Present: Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois. S. A. Murdock, State's attorney *pro tem.* Wm. M. Duffy, clerk. A. A. Brooker, sheriff.

Attest: WM. M. DUFFY, *Clerk.*

At which term the following proceedings were had, viz:

H. W. LIGHTCAP
vs.
J. B. CHARLTON. } No. 1699. Ejectment.

And now on this day comes the plaintiff, by Wallace & Lacey and H. W. Masters, his attorneys, and also comes the defendant, by
W. W. Hammond and John W. Pitman his attorneys, and
22 the defendant by his said attorneys enter a motion for a rule on the plaintiff to give security for costs, which motion is allowed by the court, and afterwards to wit: on the same day come E. A. Wallace and Lyman Lacey Jr., and enter themselves as security for costs herein.

And afterwards, to-wit: on the 7th day of August, A. D. 1895, the following order of court was made and entered of record, which is in words and figures following, to-wit:

H. W. LIGHTCAP } vs. J. B. CHARLTON. } No. 1699. Ejectment.

And now on this day again come the respective parties to the above entitled cause by their respective attorneys, and the defendant petitions the court to grant to him a change of venue from the presiding judge, and after listening to the arguments of counsel for the respective parties, it is ordered by the court that the venue be changed and by agreement of the respective parties hereto, the venue is changed to the circuit court of Fulton county, Illinois and the clerk of this court is hereby directed to certify and transmit the record and papers as the law directs.

Petition for Change of Venue.

STATE OF ILLINOIS, } ss:
Mason County, }

Circuit Court of said County, August Term, A. D. 1895.

H. W. LIGHTCAP } vs. J. B. CHARLTON. } No. 1699. Ejectment.

To the honorable judge of said court:

The defendant respectfully petitions your honors to grant a change of venue in this cause to some other court of competent jurisdiction, to-wit: to the circuit court of Fulton county, and for cause for said change petitioner respectfully shows:

This suit is brought to recover possession of and establish title to valuable lands in this county, worth at least forty thousand
23 dollars. That the real owner and present occupant of said premises by her tenants, is Lydia Bradley. That the plaintiff in this cause has received a conveyance of said land for a nomonal consideration and as petitioner is informed and believes he holds the same for the use and benefit of Mess. Wallace & Lacey, the attorneys of record herein, and it is understood and agreed between plaintiff and his attorneys that if they are successful in establishing title to and recovering possession of said lands he will convey the title to them. The plaintiff is the father-in-law of said E. A. Wallace, and petitioner shows that said Wallace & Lacey are the real parties in interest in this case and will derive the substantial benefits of success therein. Your petitioner further shows that said

Lyman Lacey Jr., one of said firm of Wallace & Lacey, is the son of the Hon. Lyman Lacey who is now presiding judge of this court, and before whom this cause would come on for hearing if tried in the usual order of business of this court.

JOHN E. YOUNG.

STATE OF ILLINOIS, } ss:
Mason County, }

J. E. Young being duly sworn on oath states that he has heard the foregoing affidavit read, and has signed the same, and that the statements therein made of his own knowledge are true, and as to the statements made upon information and belief he verily believes the same to be true.

JOHN E. YOUNG.

Subscribed and sworn to before me this 7th day of August, A. D. 1895.

WM. M. DUFFY, *Clerk.*

It is hereby stipulated that this petition shall stand as a petition for each of the defendants in causes Nos. 1699, 1700 and 1702 and the same order made in 1698 shall be made in each of the three cases above mentioned.

24

WALLACE & LACEY,
Att'y- for Pl'f.
JOHN W. PITMAN,
Att'y for Def'ts.

I, Wm. M. Duffy, clerk of the circuit court of Mason county, in the State of Illinois, aforesaid, do certify that the above and foregoing is a true, perfect and complete copy of the records and proceedings and petition and affidavit for change of venue in a certain cause lately pending in said court, on the law side thereof, wherein H. W. Lightcap was plaintiff and J. B. Charlton was defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Havana, this 10th day of August, A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

Copy of Praecipe.

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Mason County Circuit Court, August Term, A. D. 1895.

In the Matter of H. W. LIGHTCAP, Plaintiff,
vs.
J. B. CHARLTON, Defendant. } No. 1699.

To Wm. M. Duffy, Esq., clerk of said court:

You will please issue a summons in the above entitled cause, directed to the sheriff of said Mason county, in a plea of ejectment returnable at the August term of said court, A. D. 1895, to the damage of the plaintiff of twelve thousand dollars.

Dated the 13th day of July 1895.

WALLACE & LACEY, *Att'ys.*

Issued as requested July 13, 1895.

WM. M. DUFFY, *Clerk.*"

(Filed July 13, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

25 (*Copy of Summons and Return Thereon.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon J. B. Charlton if he shall be found in your county, personally to be and appear before the circuit court of said county, on the first day of the next term thereof, to be holden at the court house, in Havana in said Mason county, on the first Monday of August 1895, to answer unto H. W. Lightcap in an action of ejectment to recover possession of the following described premises, viz: a certain — with the appurtenances, situate in *tract of land in* said county, and known, designated and described as follows: and to the damage of said plaintiff as he says in the sum of twelve thousand dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, Wm. M. Duffy, clerk of our said court, and the seal thereof, at his office in Havana in said Mason county, this 13 day of July, A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*"

Endorsement.

"STATE OF ILLINOIS, }
Mason County. }

I have duly served the within by reading the same to the within named defendant J. B. Charlton this 15th day of July 1895 as I am therein commanded.

A. A. BROOKER, *Sheriff.*"

(Filed in circuit court, this 27th day of July, A. D. 1895.
WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.
J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Declaration.*)

STATE OF ILLINOIS, }
Mason County, } *ss:*

In the Circuit Court of Mason County, August Term, A. D. 1895.

26 H. W. Lightcap of the city of Havana in the county of Mason and State of Illinois plaintiff in this suit, by Wallace & Lacey his attorneys comes and complains of J. B. Charlton of the county of Mason and State of Illinois defendant, who is summoned according to the form of the statute in such case made and provided, in a plea of ejectment.

For that whereas, the said plaintiff was on the first day of July in the year of our Lord one thousand eight hundred and ninety five possessed of certain parcels of land with the appurtenances, situate in the said county, and known and described as follows, to-wit: the northeast quarter of the southwest quarter of section twenty-three (23) the south half of the southwest quarter of section twenty-three (23) and the north half of the northwest quarter of section twenty-six (26) all in township twenty-three (23) north, range six (6) west of the third (3) principal meridian. Which said premises the said plaintiff claims in fee and the said plaintiff being so possessed thereof the said defendant afterwards, to-wit, on the second day of July in the year of our Lord one thousand eight hundred and ninety five entered into the said premises and ejected the said plaintiff therefrom, and unlawfully withholds from the said plaintiff the possession thereof, to the damage of said plaintiff of twelve thousand (12,000) dollars and therefore he brings suit, etc.

WALLACE & LACEY,
Attorneys for Plaintiff."

(Filed this 13th day of July 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Affidavit for Security for Costs.*)

"STATE OF ILLINOIS, } ss :
Mason County, }

In the Circuit Court, at the August Term, A. D. 1895.

27 H. W. LIGHTCAP } In Ejectment.
vs.
J. B. CHARLTON. }

John W. Pitman after being duly sworn, under oath says, that he is attorney for the said defendant, J. B. Charlton, in the above entitled cause, and that he knows the said plaintiff, H. W. Lightcap, that said plaintiff is the head of a family and residing with the same in the city of Havana in said county, that the said plaintiff has no real or personal property over and above the exemptions allowed to him by law, and is unable to pay the costs of this and that such costs cannot be collected of him by execution or fee-bill, so as to endanger the officers of this court in respect to their legal demands. And this affiant further says, that he has reason to believe that in case said suit is prosecuted to a conclusion a judgment will be rendered against said plaintiff for said costs.

JOHN W. PITMAN.

Subscribed and sworn to before me this 6th day of August A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*"

(Filed Aug. 6th, 1895.

WM. M. DUFFY, *Clk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Plea of General Issue.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court, to the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } In Ejectment.
J. B. CHARLTON. }

And the defendant by John W. Pitman, his attorney, comes and defends the wrong and injury, when, etc., and says that he is not guilty of unlawfully withholding the said premises claimed by the plaintiff, in manner and form as alleged in said declaration, and of this he puts himself upon the country, etc.

By JOHN W. PITMAN, *His Att'y.*

And the plaintiff doth the like.

28 By WALLACE & LACEY, *His Att'ys.*"

(Filed Aug. 6th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Affidavit of Common Source of Title.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } Ejectment.
J. B. CHARLTON. }

H. W. Lightcap, being first duly sworn, on oath, states that he is the plaintiff in the above entitled cause and that the plaintiff in the said cause claims title to the lands in controversy through a common source with the defendants, that on the eighth (8th) day of October, A. D. 1867 one Benjamin S. Prettyman became and was the owner of the lands in controversy in fee simple and that the plaintiff and the defendant derive their respective titles and claims to the land in controversy through the said Benjamin S. Prettyman.

H. W. LIGHTCAP.

Subscribed and sworn to before me this 7th day of August, A. D. 1895.

WM. M. DUFFY,
Circuit Clerk."

[SEAL.]

(Filed May 24, 1901.

J. C. SEVERNS,
Circuit Clerk.)

Copy of Agreement of Common Source of Title.

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP } Ejectment.
vs.
J. B. CHARLTON. }

It is hereby stipulated and agreed by — between the plaintiff and the defendant in the above entitled suit that the plaintiff and defendant claim and derive their respective titles to the land in controversy *for* a common source that Benjamin S. Prettyman
29 on the eighth day of October, A. D. 1867 became and was the owner of the land in controversy in fee simple, by the title deducible of record from the United States of America, and that the title of the respective parties to this suit are claimed and derived through him the said Benjamin S. Prettyman and that he is the common source of title.

WALLACE & LACEY AND
H. W. MASTERS,
Attorneys for Plaintiff.
W. W. HAMMOND &
JOHN PITMAN,
Att'ys for Defendant.

(Filed August 7th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE.
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on August 20, A. D. 1895, the following among other proceedings were had and entered of record in said court in the words and figures, viz:

"H. W. LIGHTCAP
vs.
J. B. CHARLTON. } Ejectment.

And now on this day comes the plaintiff herein by his attorneys and moves the court for leave to substitute Lydia Bradley as defendant in this cause, which said motion is allowed by the court and by consent of the parties the right of trial by jury in this cause is hereby waived."

And be it remembered that heretofore, to-wit: on August 12, 1895, the following transcript of proceedings was filed herein, in the words and figures following, that is to say:

"UNITED STATES OF AMERICA,
State of Illinois, Mason County, } *ss:*

In the Circuit Court, August Term, A. D. 1895.

Pleas before the Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois and presiding judge of the circuit court of Mason county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Havana, in said county, on the first Monday (being the 5th day) of August, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

Present: Honorable Lyman Lacey, one of the three judges of the seventh judicial circuit of the State of Illinois. S. A. Murdock, State's attorney *pro tem.* Wm. M. Duffy, clerk. A. A. Brooker, sheriff.

Attest: WM. M. DUFFY, *Clerk.*

At which term the following proceedings were had, viz:

H. W. LIGHTCAP
vs.
JOHN E. YOUNG. } No. 1698. Ejectment.

And now on this day comes the plaintiff, by Wallace & Lacey and H. W. Masters, his attorneys, and also comes the defendant, by W. W. Hammond and John W. Pitman, his attorneys, and the said defendant by his attorneys enter a motion for a rule on the plaintiff to give security for costs, which motion is allowed by the court, and afterwards, to-wit: on the same day come E. A. Wallace and Lyman Lacey, Jr., and enter themselves as security for costs herein.

And afterwards, to-wit: on the 7th day of August, A. D. 1895, the following order of court was made and entered of record, which is in words and figures following, to-wit:

H. W. LIGHTCAP
vs.
JOHN E. YOUNG. } No. 1698. Ejectment.

And now on this day again come the respective parties to the above entitled cause by their respective attorneys, and the defendant petitions the court to grant to him a change of venue from the presiding judge, and after listening to the arguments of the
31 counsel for the respective parties, it is ordered by the court that the venue be changed and by agreement of the respective parties hereto, the venue is changed to the circuit court of Fulton county, Illinois, and the clerk of this court is hereby directed to transmit the record and papers as the law directs.

Petition for Change of Venue.

STATE OF ILLINOIS, }
Mason County, } *ss:*

Circuit Court of said County, August Term, A. D. 1895.

H. W. LIGHTCAP
vs.
JOHN E. YOUNG. } No. 1698. Ejectment.

To the honorable judge of said court:

The defendant respectfully petitions your honors to grant a change of venue in this cause to some other court of competent jurisdiction, to-wit: to the circuit court of Fulton county, and for cause for said change petitioner respectfully shows:

That this suit is brought to recover possession of and establish title to valuable lands in this county, worth at least forty thousand dollars. That the real owner and present occupant of said premises, by her tenants, is Lydia Bradley. That the plaintiff in this cause received a conveyance of said land for a nominal consideration and as petitioner is informed and believes he holds the same for the use and benefit of Mess. Wallace & Lacey, the attorneys of record herein, and it is understood and agreed between plaintiff and his attorneys that if they are successful in establishing title to and recovering possession of said lands he will convey the title to them.

The plaintiff is the father-in-law of said E. A. Wallace. And petitioner shows that said Wallace and Lacey are the real parties in interest in this case and will derive the substantial benefits of success therein. Your petitioner further shows that said Lyman

Lacey, Jr., one of said firm of Wallace & Lacey, is the son of the Hon. Lyman Lacey who is now presiding judge of said court,
32 and before whom this cause would come on for hearing, if tried in the usual order of business of this court.

JOHN E. YOUNG.

STATE OF ILLINOIS, } ss:
Mason County, }

J. E. Young being duly sworn on oath states that he has heard the foregoing affidavit read, and has signed the same, and that the statements therein made of his own knowledge are true, and as to the statements made upon information and belief he verily believes the same to be true.

JOHN E. YOUNG.

Subscribed and sworn to before me this 7th day of August, A. D' 1895.

WM. M. DUFFY, *Clerk.*

It is hereby stipulated that this petition shall stand as a petition for each of the defendants in causes Nos. 1699, 1700 and 1702 and the same order made in 1698 shall be made in each of the three cases above mentioned.

WALLACE & LACEY,
Att'y for Pl'ff.
JOHN W. PITMAN,
Att'y for Def'ts.

I, Wm. M. Duffy, clerk of the circuit court of Mason county, in the State of Illinois, aforesaid, do hereby certify that the above and foregoing is a true, perfect and complete copy of the record and proceedings and petition and affidavit for change of venue in a certain cause lately pending in said court, on the law side thereof, wherein H. W. Lightcap was plaintiff and John E. Young was defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Havana, this 10th day of August, A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*

33 *Copy of Pracipe.*

STATE OF ILLINOIS, } ss:
Mason County, }

In the Mason County Circuit Court, August Term, A. D. 1895.

In the Matter of H. W. LIGHTCAP, Plaintiff, } No. 1698.
vs.
JOHN E. YOUNG, Defendant. }

To Wm. M. Duffy, Esq., clerk of said court:

You will please issue a summons in the above entitled cause, directed to the sheriff of said Mason county, in a plea of ejectment

returnable at the August term of said court, A. D. 1895, to the damage of the plaintiff of ten thousand dollars.

Dated the 13th day of July, 1895.

WALLACE & LACEY, *Att'ys.*

Issued as requested July 13, 1895.

WM. M. DUFFY, *Clerk.*"

(Filed July 13, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Summons and Return Thereon.*)

STATE OF ILLINOIS, }
Mason County, } *ss.*:

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon John E. Young if he shall be found in your county, personally to be and appear before the circuit court of said county, on the first day of next term thereof, to be holden at the court house in Havana in said Mason county, on the first Monday of August 1895, to answer unto H. W. Lightcap in an action of ejectment to recover the possession of the following described premises, viz: a certain — with the appurtenances, situate in *tract of land in* the said county, and known, designated, and described as follows: — and to the damage of said plaintiff as he says in the sum of ten thousand dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

34 Witness, Wm. M. Duffy, clerk of our said court, and the seal thereof, at his office in Havana in said Mason county, this 13 day of July A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*"

(*Return Thereon.*)

STATE OF ILLINOIS, }
Mason County. }

I have fully served the within by reading the same to the within named John E. Young this 23rd day of July A. D. 1895 as I am therein commanded.

J. S. LANDRETH, *Bailiff.*

STATE OF ILLINOIS, } ss:
Mason County, }

I do hereby appoint J. S. Landreth as my special deputy to serve the within writ: This 16 day of July 1895.

A. A. BROOKER, *Sheriff.*

STATE OF ILLINOIS, } ss:
Mason County, }

I have served the within by reading the same to the within named defendant John E. Young. This 23 day of July, 1895.

J. S. LANDRETH.

Subscribed and sworn to before me this 24th day of July A. D. 1895.

C. J. HAMILTON,
Justice of the Peace."

(Filed in circuit court this 27 day of July A. D. 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug. 12, 1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Declaration.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, August Term, A. D. 1895.

H. W. Lightcap of the city of Havana in the county of Mason and State of Illinois plaintiff in this suit, by Wallace & Lacey his attorneys comes and complains of John E. Young of the county of Mason and State of Illinois defendant, who is summoned according to the form of the statute in such case made and provided, in a plea of ejectment. For that whereas, the said plaintiff was on the first day of July in the year of our Lord one thousand eight hundred and ninety-five possessed of certain parcels of land with the appurtenances, situate in the said county, and known and described as follows, to-wit: the northeast quarter of section twenty two (22), township twenty-three (23) north, range six (6) west of the third (3) principal meridian. Which said premises the said plaintiff claims in fee and the said plaintiff being so possessed thereof the said defendant afterwards, to-wit, on the second day of July in the year of our Lord one thousand eight hundred and ninety five entered into the said premises and ejected the said plaintiff therefrom, and unlawfully withholds from the said plaintiff the possession

thereof, to the damage of said plaintiff of ten thousand (10,000) dollars, and therefore he brings suit, etc.

WALLACE & LACEY,
Attorneys for Plaintiff."

(Filed July 13th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug.–12–1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Affidavit for Security for Costs.*)

STATE OF ILLINOIS, }
Mason County, } *ss:*

In the Circuit Court, at the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } In Ejectment.
JOHN E. YOUNG. }

John W. Pitman after being duly sworn under oath states that he is attorney for the said defendant, John E. Young, in the above entitled cause and that he knows the said plaintiff, H. W. Lightcap, that said plaintiff is the head of a family and residing with the same in the city of Havana in said county, that said plaintiff has no real or personal property over and above the exemptions allowed to him by law, and is unable to pay the costs of this suit and
36 that such costs cannot be collected of him by execution of fee bill, so as to endanger the officers of this court in respect to their legal demands. And this affiant further says that he has reason to believe that in case said suit is prosecuted to a conclusion a judgment will be rendered against said plaintiff for said costs.

JOHN W. PITMAN.

Subscribed and sworn to before me this 6th day of August A. D. 1895.

WM. M. DUFFY, *Clerk.*"

(Filed Aug*h*'t 6th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug.–12–1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Plea of General Issue.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court, to the August Term, A. D. 1895.

H. W. LIGHTCAP } In Ejectment.
vs.
JOHN E. YOUNG. }

And the defendant by John W. Pitman, his attorney comes and defends the wrong and injury, when, etc. and says that he is not guilty of unlawfully withholding the said premises claimed by the plaintiff, in manner and form as alleged in said declaration; and of this he puts himself upon the country, etc.

By JOHN W. PITMAN, *His Att'y.*

And the plaintiff dith the like.

By WALLACE & LACEY, *His Att'ys.*"

(Filed Aug't 6th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug.–12–1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Affidavit of Common Source of Title.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP } Ejectment.
vs.
JOHN E. YOUNG. }

37 H. W. Lightcap being first duly sworn on oath, states that he is the plaintiff in the above entitled cause and that the plaintiff in said cause claims title to the lands in controversy through a common source with the defendants, that on the eighth (8th) day of October, A. D. 1867 one Benjamin S. Prettyman became and was the owner of the lands in controversy in fee simple and that the plaintiff and the defendant derive their respective titles and claims to the land in controversy through the said Benjamin S. Prettyman.

H. W. LIGHTCAP.

Subscribed and sworn to before me this 7th day of August A. D. 1895.

WM. M. DUFFY,
Circuit Clerk."

[SEAL.]

(Filed May-24-1902.

J. C. SEVERNS.
Circuit Clerk.)

(*Copy of Stipulation as to Common Source of Title.*)

"STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

It is hereby stipulated and agreed between the plaintiff and the defendant in the above entitled suit that the plaintiff and the defendant claim and derive their respective titles to the land in controversy *for* a common source that Benjamin S. Prettyman on the eighth day of October, A. D. 1867 became and was the owner of the land in controversy in fee simple by title deducible of record from the United States of America and that the title of the respective parties to this suit are claimed and derived through him the said Benjamin S. Prettyman and that he is the common source of title.

WALLACE & LACEY AND
H. W. MASTERS,
Att'ys for Plaintiff.
W. W. HAMMOND AND
JOHN PITMAN,
Att'ys for Defendant.

(Filed Aug't 7th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug.-12-1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

38 *Copy of Stipulation.*

STATE OF ILLINOIS, }
Mason County. }

Circuit Court, August Term, A. D. 1895.

It is hereby stipulated that upon the trial hereof either party may introduce in evidence certified copies of records of Mason county without proof of loss of originals.

Also may introduce original files in the case of Lydia Bradley *v.*

Absolom McCune *et al.*, in the circuit court of Mason county without formal proof of identification of same, or objection that the record would be the best evidence, the said case of Lydia Bradley *v.* Absolom McCune is the same as the case of Lydia Bradley Clarke *v.* Absolom McCune.

It is further stipulated and agreed that John Coddington went into possession of the lands in controversy in this case as the tenant of Lydia Bradley and took up his residence thereon, on or about Jan'y 1st, 1880, that he enclosed said land with a fence on or about March 1st, 1882 and continued to reside upon said land as such tenant up to about July 1st 1893.

This stipulation shall apply also in the case of Lightcap *v.* Charlton #1699, Lightcap *v.* Martin *et al.* #1700 and Lightcap *v.* Hootman #1702, in the above entitled court. This stipulation shall continue until these cases have been once tried.

W. W. HAMMOND &
JNO. W. PITMAN,
Att'ys for Defendants.
WALLACE & LACEY,
H. W. MASTERS,
Attorneys for Plaintiff.

It is further stipulated that the tax receipts for taxes paid by Lydia Bradley upon the property involved in all said cases, viz. Apr.-2-1885 by Samuel Bivens for $107.04 Apr. 12" 1886 by Samuel Bivens for $136.97 Apr. 4" 1887, by Jno. H. Dierker for $129.86 Mar. 1st 1888, by Jno. W. Thomas for $86.72 Mar. 4" 1889
39 by John H. Warner for $74.78, Feb'y 25" 1890 by Jno. H. Warner for $87.49, Feb'y 28" 1891 by Jno. H. Warner for $119.54, June 18/91 by Albert Werner for $47.62 Feb'y 25" 1892 by Daniel Zimmerman for $139.31 Mar. 11" 1893 by Dan'l Zimmerman for $149.58 and Feb'y 27" 1894 for $154.86 may be introduced in evidence in said cases without proof of signatures.

WALLACE & LACEY,
Att'y- for Pl'ff.
W. W. HAMMAOND &
JNO. W. PITMAN,
Att'ys for Defendants."

(Filed August 7th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Aug.-12-1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on August 20, A. D. 1895, the following among other proceedings were had and entered of record in said court, in the words and figures, that is to say:

H. W. LIGHTCAP
vs.
JOHN E. YOUNG. } Ejectment.

And now on this day comes the plaintiff by his attorneys and enter their motion for leave to substitute Lydia Bradley as defendant in this case, which said motion is allowed by the court and by consent of parties the right of trial by jury in this case is hereby waived."

STATE OF ILLINOIS, }
Mason County, } *ss.:*

In the Circuit Court, at the August Term, 1895.

H. W. LIGHTCAP
vs.
JOHN E. YOUNG. } Ejectment. Change of Venue from Mason County.

On motion of the defendant and Lydia Bradley it is hereby ordered that said Lydia Bradley the land lord be and she is hereby substituted as defendant in this case in place of the defendant John E. Young who is only tenant of the lands involved.

JEFFERSON ORR, *Judge.*

(Filed Aug.-20-1895.

J. D. BRECKENRIDGE,
Circuit Clerk.)

40 And be it remembered that afterwards, to-wit: the following among other proceedings were had and entered of record in said court, on October 21, A. D. 1895, the same being one of the regular days thereof, that is to say:

"Ordered by the court that all causes, motions and other matters pertaining to the present term of this court and not otherwise disposed of be and the same are hereby continued to the next term of this court. Ordered by the court that court do adjourn and so to stand until the next regular term of this court in course."

41 UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Fulton, }

Pleas before the Honorable Jefferson Orr, one of the three judges of the sixth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the second day (being the first Monday) of December, in the year of our Lord one thousand eight hundred and ninety-five.

Present: Honorable Jefferson Orr, judge. P. W. Gallagher, State's attorney. James M. Laws, sheriff. J. D. Breckenridge, clerk.
Attest: J. D. BRECKENRIDGE, *Clerk.*

Court opened by proclamation.

And be it remembered that afterwards, to-wit: on December 21, A. D. 1895, the same being one of the regular days of said term of said court, the following among other proceedings were had and entered of record in said court, in the words and figures, viz:

And now on this day it is ordered by the court that all causes motions and other matters pertaining to the present term of this court and not otherwise disposed of be and the same are hereby continued to the next regular term of this court.

Ordered by the court that court do now adjourn so to stand until the next regular term of this court in course."

42 UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Fulton, }

Pleas before the Honorable Jefferson Orr, one of the three judges of the sixth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the ninth day, being the second Monday of March, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and nineteenth.

Present: Honorable Jefferson Orr, judge. P. W. Gallagher, State's attorney. J. D. Breckenridge, clerk. James M. Laws, sheriff.
Attest: J. D. BRECKENRIDGE, *Clerk.*

Court opened by proclamation.

And be it remembered that afterwards, to-wit, on March 10, A. D. 1896, the same being one of the regular days of said term of said court, *that* was filed with the clerk as aforesaid, the following transcript of proceedings, in the words, viz:

"UNITED STATES OF AMERICA, } ss:
State of Illinois, Mason County, }

In the Circuit Court, February Term, A. D. 1896.

Pleas before the Honorable Cyrus Epler, one of the three judges of the seventh judicial circuit of the State of Illinois, and presiding judge of the circuit court of Mason county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Havana, in said county, on the tenth day (being the second Monday) of February, in the year of our Lord one thousand eight
43 hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

Present: Honorable Cyrus Epler one of the three judges of the seventh judicial circuit of the State of Illinois. S. A. Murdock, State's attorney. Wm. M. Duffy, clerk. A. A. Brooker, sheriff.
Attest: WM. M. DUFFY, *Clerk.*

H. W. LIGHTCAP }
vs. } No. 1701. Ejectment.
AARON EVANS. }

First Day, February Term, 1896, February 10th, 1896.

And now on this day comes the plaintiff by Wallace & Lacey his attorneys and also comes the defendant by John W. Pitman his attorney files pleas *pleas* herein and enters a motion to grant him a change of venue from the presiding judge and after listening to the arguments of counsel for the respective parties. It is ordered by the court that the venue be changed and *and* by agreement of the parties hereto the venue is changed to the circuit court of Fulton county, Illinois, and the clerk of this court is hereby directed to certify and transmit the record and papers as the law directs.

I, Wm. M. Duffy clerk of the circuit court of Mason county, in the State aforesaid, do hereby certify that the above and foregoing is a true, perfect and complete copy of the record at the February term of our said court in a certain cause pending in said court, on the law side thereof, wherein H. W. Lightcap is plaintiff and Aaron Evans is defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Havana, this third day of March A. D. 1896.

[SEAL.] WM. M. DUFFY, *Clerk.*"

(Filed Mar.-10-1896.

J. D. BRECKENRIDGE,
Circuit Clerk.)

44 (*Copy of Præcipe.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit County Court, August Term, A. D. 1895.

In the Matter of H. W. LIGHTCAP, Plaintiff, } No. 1701.
vs.
AARON EVANS, Defendant. }

To Wm. M. Duffy, Esq., clerk of said court:

You will please issue a summons in the above entitled cause, directed to the sheriff of said Mason county, in a plea of ejectment returnable at the August term of said court, A. D. 1895 to the damage of the plaintiff of twelve thousand dollars.

Dated the 13th day of July 1895.

WALLACE & LACEY,
Att'ys for Pl'ff.

Issued as requested July 13, 1895.

WM. M. DUFFY, *Clerk.*"

(Filed July 13th, 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Mar.-10-1896.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copies of Summons and Returns Thereon.*)

STATE OF ILLINOIS, } ss:
Mason County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon Aaron Evans if he shall be found in your county, personally to be and appear before the circuit court of said county, on the first day of the next term thereof, to be holden at the court house, in Havana in said Mason county, on the first Monday of August 1895, to answer unto H. W. Lightcap in an action of ejectment to recover possession of the following described premises, viz: a certain — with the appurtenances, situate in *tract of land in* the said county, and known, designated and described as follows: — and to the damage of said plaintiff as he says in the sum of twelve thousand dollars. And have you then and there this

writ, with an indorsement thereon, in what manner you shall have executed the same.

45 Witness, Wm. M. Duffy clerk of our said court, and the seal thereof, at his office in Havana in said Mason county this 13 day of July A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*"

(*Return Thereon.*)

STATE OF ILLINOIS, }
Mason County. }

I do hereby appoint J. S. Landreth as my special deputy to serve the within writ. This 16 day of *July 1895.*

A. A. BROOKER, *Sheriff.*

Aaron Evans not found in my county as I am therein commanded.

J. S. LANDRETH, *Bailiff.*"

STATE OF ILLINOIS, }
Mason County, } *ss:*

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon as we did command you before Aaron Evans if he shall be found in your county, personally to be and appear before the circuit court of said county, on the first day of the next term thereof, to be holden at the court house in Havana in said Mason county, on the first Monday of November 1895, to answer unto H. W. Lightcap in an action of ejectment to recover the possession of the following described premises, viz: a certain tract of land with the appurtenances, situate in the said county, and known, designated and described as follows: and to the damage of said plaintiff as he say- in the sum of twelve thousand dollars. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Wm. M. Duffy, clerk of our said court, and the seal thereof, at his office in Havana in said Mason county, this 28th day of August A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*"

(*Return Thereon.*)

46 STATE OF ILLINOIS, }
Mason County, } *ss:*

I do hereby appoint J. S. Landreth my special deputy to serve the within writ. This 27th day of September, A. D. 1895.

A. A. BROOKER, *Sheriff.*"

STATE OF ILLINOIS, } ss:
Mason County, }

I have duly served the within by reading the same to the within named defendant Aaron Evans this 5th day of October A. D. 1895.

JOHN S. LANDRETH.

Sworn to before me this 5th day of October 1895.

C. J. HAMILTON, *J. P.*"

(Filed in circuit court this 7th day of Oct. A. D. 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Mar.-10-1896.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Declaration.*)

STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court of Mason County, August Term, A. D. 1895.

H. W. Lightcap of the city of Havana in the county of Mason and State of Illinois plaintiff in this suit, by Wallace & Lacey his attorneys comes and complains of Aaron Evans of the county of Mason and State of Illinois defendant, who is summoned according to the form of the statute in such case made and provided, in a plea of ejectment. For that whereas, the said plaintiff was on the first day of July in the year of *your* Lord one thousand eight hundred and ninety five possessed of certain parcels of land with the appurtenances, situate, in the said county, and known and described as follows, to-wit: The southeast quarter of section twenty three (23) and the north half of the northeast quarter of section twenty-six (26) all in township twenty three (23) north range six (6) west of the third (3rd) principal meridian. Which said premises the said plaintiff claims in fee and the said plaintiff being so possessed thereof
47 the said defendant afterwards, to-wit, on the second day of July in the year of our Lord one thousand eight hundred and ninety five entered into the said premises and ejected the said plaintiff therefrom, and unlawfully withholds from the said plaintiff the possession thereof, to the damage of said plaintiff of twelve thousand (12000) dollars, and therefore he brings suit, etc.

WALLACE & LACEY,
Attorneys for Plaintiff."

(Filed this 13th day of July 1895.

WM. M. DUFFY, *Clerk.*)

(Filed Mar.-10-1896.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Plea—"Not Guilty."*)

STATE OF ILLINOIS, }
Mason County. }

In the Circuit Court, at the February Term, 1896.

H. W. LIGHTCAP }
vs. } Ejectment.
AARON EVANS. }

And now comes the defendant by John W. Pitman his attorney and says that he is not guilty of withholding the said premises in manner and form as charged in the declaration, and of this he puts himself upon the country, etc.

JOHN W. PITMAN,
Att'y for the Defendant."

(Filed Feb. 10th 1896.

WM. M. DUFFY, *Clerk.*)

(Filed Mar.–10–1896.

J. D. BRECKENRIDGE,
Circuit Clerk.)

(*Copy of Affidavit of Common Source of Title.*)

STATE OF ILLINOIS, }
Mason County, } *ss:*

In the Circuit Court of Mason County, Illinois, to the August Term, A. D. 1895.

H. W. LIGHTCAP }
vs. } Ejectment.
AARON EVANS. }

H. W. Lightcap, being first duly sworn on oath, states that he is the plaintiff in the above entitled cause and that the plaintiff in the said cause claims title to the lands in controversy through a
48 common source with the defendants, that on the eighth (8th) day of October, A. D. 1867 one Benjamin S. Prettyman became and was the owner of the lands in controversy in fee simple and that the plaintiff and the defendant derive their respective titles and claims to the land in controversy through the said Benjamin S. Prettyman.

H. W. LIGHTCAP.

Subscribed and sworn to before me this 7th day of August A. D. 1895.

[SEAL.] WM. M. DUFFY, *Clerk.*"

(Filed May-24-1901.

J. C. SEVERNS,
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on March 1, A. D. 1896, the same being one of the regular days of said term of said court, the following among other proceedings were had and entered of record in said court, in the words and figures, viz:

STATE OF ILLINOIS, } ss:
Fulton County, }

In the Circuit Court of Fulton County, Illinois, to the March Term, A. D. 1896.

H. W. LIGHTCAP *vs.* JOHN E. YOUNG.	Ejectment.	Venue from Mason County.
H. W. LIGHTCAP *vs.* J. B. CHARLTON.	Ejectment.	Venue from Mason County.
H. W. LIGHTCAP *vs.* WILLIAM MARTIN and J. T. Reynolds.	Ejectment.	Venue from Mason County.
H. W. LIGHTCAP *vs.* H. J. HOOTMAN.	Ejectment.	Venue from Mason County.
H. W. LIGHTCAP *vs.* AARON EVANS.	Ejectment.	Venue from Mason County.

On motion of Lydia Bradley and by consent of the plaintiff and the several defendants in the above entitled five cases, leave
49 is given to Lydia Bradley to be made defendant in each of said cases and to defend the same as landlord and warrantor of all of the original defendants and by and with the consent of all the parties in interest it is ordered by the court that said five cases be consolidated into one case and that in the further prosecution of said suit it shall be entitled "H. W. Lightcap *vs.* Lydia Bradley substituted as defendant as the landlord and warrantor of John E. Young, J. G. Charlton, William Martin, J. T. Reynolds, H. J. Hootman and Aaron Evans."

JEFFERSON ORR, *Judge.*"

(Likewise on the date last aforesaid the following orders were entered of record in said court.)

H. W. LIGHTCAP
vs.
J. B. CHARLTON (J. B. Carton.) } Ejectment.

And now on this day it is ordered by the court that this cause be and the same is consolidated with case of H. W. Lightcap *vs.* John E. Young.

H. W. LIGHTCAP
vs.
WILLIAM MARTIN.

And now on this day it is ordered by the court that this cause be and the same hereby is consolidated with case of H. W. Lightcap *vs.* John E. Young.

H. W. LIGHTCAP
vs.
H. J. HOOTMAN. } Ejectment.

And now on this day it is ordered by the court that this cause be and the same is hereby consolidated with case of H. W. Lightcap *vs.* John E. Young.

H. W. LIGHTCAP
vs.
AARON EVANS. } Ejectment.

50 And now on this day it is ordered by the court that this cause be and the same is hereby consolidated with the cause of H. W. Lightcap *vs.* John E. Young."

And be it remembered that afterwards, to-wit: on the same day and date last aforesaid, the following judgment was rendered in the above entitled cause, which judgment and finding of the court, is in the words and figures, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted as Defendant as the Landlord and Warrentor of John E. Young, J. B. Charlton, William Martin, J. T. Reynolds, H. J. Hootman, and Aaron Evans. } Ejectment.

And now on this day this cause coming on for a hearing before the court the right of trial by jury having been heretofore waived in this cause and the court having heard all the evidence adduced

in the premises and the argument of counsel thereon, at the December term of this court and the court having taken the case under advisement, and being now fully advised in the premises finds that the said defendant is not guilty in manner and form as the plaintiff hath in his declaration complained against her.

It is therefore considered by the court that the said defendant Lydia Bradley do have and recover of and from the plaintiff H. W. Lightcap her costs and charges by her about her suit in this behalf expended to be taxed and may have execution therefor.

And now comes the plaintiff herein and enters his motion for a new trial in this cause which said motion is over-ruled by the court, to which ruling of the court the plaintiff then and there excepted. And now comes the plaintiff by his attorneys and prays an appeal to the supreme court of the State of Illinois which is allowed on filing bond in the sum of three hundred dollars security to be approved by the clerk of this court, within thirty days from this date and bill of exceptions within thirty days from this date."

51 And be it remembered that afterwards, the same being in vacation after said term, the said appeal as prayed from the aforesaid finding and judgment of the court, was perfected in manner and form as therein indicated.

UNITED STATES OF AMERICA, }
State of Illinois, County of Fulton, } ss:

Pleas before the Honorable John A. Gray, one of the three judges of the ninth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the 20th day (being the third Monday) of May, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-fifth.

Present: Hon. John A. Gray, judge; B. H. Taylor, State's attorney; J. C. Severns, clerk; L. C. Fouts, sheriff.
Attest: J. C. SEVERNS, *Clerk*.

Court opened by proclamation.

Be it remembered that heretofore, to-wit: on December 18th A. D. 1900 a final order of reversal from the supreme court of the State of Illinois was filed in said circuit court. A copy of said final order of reversal being in the words and figures following, that is to say:

52 STATE OF ILLINOIS, }
Supreme Court, } ss:

At a supreme court, begun and held at Springfield, on the first Tuesday in the month of June, in the year of our Lord one thou-

sand eight hundred and ninety-six, the same being the 2nd day of June in the year of our Lord one thousand eight hundred and ninety-six.

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice. Alfred M. Craig, justice. James H. Cartwright, justice. Joseph N. Carter, justice. David J. Baker, justice. Jesse J. Phillips, justice.

And afterwards, to wit on the 19th day of October in the year of our Lord one thousand nine hundred an order was made by said court in words and figures following, to-wit:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substitute- as Landlord and Warrantor of John E. Young, J. B. Charlton, William Martin, J. F. Reynolds, H. J. Hartman, and Aaron Evans. } Appeal from Fulton.

On this day again came the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of the opinion, that in the records and proceedings aforesaid, and in the rendition of the judgment aforesaid there is manifest error: Therefore, it is considered by the court, that for that error, and others in the record and proceedings aforesaid, the judgment and decree of the circuit court, in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court for further proceed-
53 ings in accordance with the views expressed in the opinion filed in this cause, and the motion heretofore entered to affirm said judgment is denied.

And it is further considered by the court, that the said appellant recover of and from the said appellee costs by him in this behalf expended, and that he have execution therefor.

I, A. D. Cadwallader, clerk of the said supreme court do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above entitled cause, of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court, at Springfield, this 17th day of November in the year of our Lord one thousand nine hundred.

[SEAL.] A. D. CADWALLADER,
Clerk of the Supreme Court."

(Filed Dec.-18-1900.

J. C. SEVERNS,
Circuit Clerk.)

(*Copy of Notice to Defendant.*)

STATE OF ILLINOIS, } ss:
Fulton County, }

In the Circuit Court of Fulton County, Illinois, to the January Term, A. D. 1901.

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, etc. } Ejectment.

To Lydia Bradley, defendant in the above entitled cause, and to W. W. Hammond, attorney for said defendant:

You are hereby notified that a transcript of the mandate and order of the supreme court of the State of Illinois reversing the judgment of the circuit court of Fulton county, Illinois, rendered by said circuit — on the trial of said cause, and remanding said cause to said circuit court for trial in accordance with the judgment of said supreme court, has been filed in said circuit court wherein
54 said cause was originally tried, and that on the first day of the next term of said Fulton county circuit court, or as soon thereafter as counsel can be heard, the plaintiff will ask to have said cause reinstated in said circuit court and for a trial thereof.

Dated this 29th day of November, A. D. 1900.

WALLACE & LACEY,
Attorneys for Plaintiff.

Received a copy of the above notice this 3rd day of Jan'y A. D. 1901.

W. W. HAMMOND,
Attorney for Defendants.

(Filed May-24-1902.

J. C. SEVERNS,
Circuit Clerk.)

And be it remembered that afterwards, to-wit on January 14th, 1901, the same being the first day of the January term, A. D. 1901, of said circuit court, the following among other proceedings were had and entered of record, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, etc. } Ejectment.

Now on this day it is ordered by the court that this cause be and the same is hereby continued, generally, to the next term of this court."

And be it remembered that afterwards, to-wit: on May 24th A. D. 1901, the same being the 5th day of the May term A. D. 1901, of said circuit court, the defendant by her attorneys files herein her additional plea. A copy of said additional plea being in the words and figures as follows, that is to say:

STATE OF ILLINOIS, } ss:
Fulton County, }

In the Circuit Court, May Term, A. D 1901.

H. W. LIGHTCAP } Ejectment.
vs.
LYDIA BRADLEY. }

55 Now comes the defendant by leave of court first had and obtained and files this her further plea in this behalf and says, that the said plaintiff ought not to have his aforesaid action against her the defendant because she says that the said plaintiff did not bring his said action within twenty years after the right to bring such action first accrued or with- twenty years after this defendant became seized or possessed of the said premises, and of this she puts herself upon the country.

LYDIA BRADLEY,
By HAMMOND, WAGGONER & CHIPERFIELD."

(Filed May 24–1902.

J. C. SEVERNS,
Circuit Clerk.)

And afterwards upon the same date affidavits of common source of title were filed herein, a copy of the same being in words and figures as follows, that is to say:

STATE OF ILLINOIS, } ss:
Fulton County, }

In the Circuit Court of Fulton County, to the May Term, A. D. 1901.

H. W. LIGHTCAP } Ejectment.
vs.
LYDIA BRADLEY, Sunstituted, etc. }

Lyman Lacey Jr., being first duly sworn, on his oath, deposes and says that his name is Lyman Lacey, Jr., that he resides in the city of Havana in the county of Mason and State of Illinois, that he is one of the attorneys for the plaintiff in the above entitled cause and that the plaintiff in the said cause claims title to the land in controversy through a common source with the defendant, that on the

eighth (8th) day of October, A. D. 1867, one Benjamin S. Prettyman became and was the owner of the lands in controversy in fee simple and that the plaintiff and the defendant derive their respective titles and claims to the lands in controversy through the said Benjamin S. Prettyman.

LYMAN LACEY, JR.

56 Subscribed and sworn to before me this 23*th* day of May, A. D. 1901.

[SEAL.] C. E. WALSH,
Circuit Clerk of Mason County, Ills.,
By S. A. M., *Deputy.*

(Filed May-24-1902.

J. C. SEVERNS,
Circuit Clerk.)

STATE OF ILLINOIS, }
Fulton County, } *ss:*

In the Circuit Court, May Term, A. D. 1901.

W. H. LIGHTCAP }
vs. } Ejectment.
LYDIA BRADLEY. }

Lydia Bradley being first duly sworn on oath states that she is the defendant in the above entitled cause and that upon the first trial thereof it was stipulated and agreed between the plaintiff and defendant that B. S. Prettyman was common source of title, that since the first hearing said cause has been appealed to the supreme court, and that the final decision of the said supreme court in this cause has fixed and determined certain questions upon which plaintiff based her title in the first trial of this cause and under and in accordance with the holding of the supreme court in this cause B. S. Prettyman is not common source of title for plaintiff and defendant, and this defendant desires to introduce evidence of title from other source than B. S. Prettyman. Wherefore defendant says she desires to withdraw from the stipulation and makes oath and says that B. S. Prettyman is not the common source of title as between her and the said plaintiff.

LYDIA BRADLEY.

Subscribed and sworn to before me this 12th day of November, A. D. 1900.

CLARA E. COMSTOCK,
[SEAL.] *Notary Public.*

Received copy of above this 3rd day of Dec. 1900.
WALLACE & LACEY."

(Filed May-24, 1901.

J. C. SEVERNS,
Circuit Clerk.)

57 And afterwards, to-wit: on the same date a stipulation is filed in said cause. A copy of said stipulation being in the words and figures as follows, that is to say:

STATE OF ILLINOIS, } ss:
Fulton County, }

In the Fulton County Circuit Court, May Term, 1901.

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted as Defendant, etc. } Ejectment.

It is hereby stipulated and agreed by and between the plaintiff and the defendant in the above entitled suit that on the trial of said cause either parties to said suit may introduce and read in evidence exemplified or certified copies of patents from the records of the general land office, also copies of deeds, mortgages, trust deeds and releases from the records of Mason and Tazewell counties, Illinois, or either county which relates to the land in controversy; also certified copies of the whole or any part of the files, papers, and records in the chancery suit lately pending in Mason county circuit court, State of Illinois, entitled Lydia Bradley Clark *vs.* B. S. Prettyman, *et al.* without proof of loss or inability to produce the original instrument; said copies to be used without objection that they are copies.

It is further stipulated that E. G. Johnson who was named as trustee in the trust deed from Absolom McCune to said Johnson as trustee to secure indebtedness of said McCune to said Lydia Bradley on the land in controversy, was the same identical E. G. Johnson who was the solicitor in the said suit of said defendant against B. S. Prettyman, *et al.* Foreclosing said trust deed. And the plaintiff in this suit waives objections to the form of questions in the depositions of Lydia Bradley taken in this suit, for use.

WALLACE & LACEY, *Att'ys for Pl'ff.*
HAMMOND, WAGGONER & CHIPERFIELD,
Att'ys for Def't."

(Filed May-24-1901.

J. C. SEVERNS,
Circuit Clerk.)

58 And be it remembered that afterwards, to-wit: on the same day the following among other proceedings were had and entered of record, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, etc. } Ejectment.

Now on this day this cause coming on to be heard, comes the parties hereto by their respective attorneys and are ready for trial,

whereupon come a jury, to-wit: William Coons, John Shaffer, Marion Shelby, Edward Manwarren, Ray Hickle, Frank Hill, Jesse Richardson, Harvey Harmon, Wilber Casper, Charles Fox, John O'Bryant, Frank A. Morton, twelve good and lawful men who are duly tried, selected and sworn, well and truly to try the issues joined and a true verdict render according to the evidence in the case, and who now sit together and hear the evidence adduced herein, whereupon the plaintiff by his attorneys, Lacey, Wallace, Masters and Foster, moves the court to strike plea filed May 24th, 1901, from the files, herein, which said motion the court after due consideration doth sustain and allow, and the said plea is accordingly stricken from the files.

And now comes the plaintiff and adduces the evidence in this suit in his behalf and thereupon rests. Whereupon the defendant by her attorneys, Hammond, Chiperfield and Chiperfield and H. M. Waggoner demur to the evidence of plaintiff adduced herein which said demurrer the court after due consideration doth overrule.

And now comes the defendant by her attorneys and adduces the evidence in this suit in her behalf and thereupon rests.

Whereupon comes the plaintiff by his attorneys and moves the court to direct the jury to find a verdict for plaintiff herein, which said motion the court doth further consider."

59 Said motion being filed herein in writing, a copy thereof is in words and figures following, that is to say:

STATE OF ILLINOIS, } ss:
County of Fulton, }

In the Circuit Court of Fulton County, May Term, A. D. 1901.

H. W. LIGHTCAP }
vs. } Ejectment.
LYDIA BRADLEY. }

And now, at the conclusion of all testimony, offered on the part of both plaintiff and defendant, on the trial of said cause the plaintiff comes by his attorneys, and moves the court here to take said cause from the jury, and direct the jury to find in favor of the plaintiff and return a verdict in words and figures, as follows: We the jury find the defendant guilty and find the title to the lands in controversy in this suit, to be in the plaintiff in fee simple."

(Filed May-25-1901.

J. C. SEVERNS,
Circuit Clerk.)

And be it remembered that afterwards to wit: on May 25th A. D. 1901, the same being the sixth day of said May term of said circuit court, the following among other proceedings were had and entered of record, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, etc. } Ejectment.

Now on this day this cause coming on to be further heard, the court after due consideration doth allow said plaintiff's motion heretofore made herein that the court direct the jury to find a verdict for the plaintiff, and the court doth so instruct the jury, which instruction to the jury is in the words and figures as follows: "We the jury find the defendant guilty and find the title to the lands in controversy in this suit, to be in the plaintiff in fee simple."

60 To which said instruction the defendant by her counsel then and there excepts. Whereupon the jury under said instructions return in open court the following verdict: "We the jury find the defendant guilty and find the title to the lands in controversy in this suit to be in the plaintiff in fee simple," to which said verdict the defendant then and there excepts. Thereupon comes the defendant by her counsel and moves the court to set aside the verdict of the jury heretofore rendered herein and grant unto her a new trial of this cause, which said motion the court doth further consider."

(Said motion being filed herein in writing a copy thereof is in words and figures, that is to say:)

STATE OF ILLINOIS, } *ss.*:
County of Fulton, }

In the Circuit Court of Fulton County, May Term, A. D. 1901.

H. W. LIGHTCAP
vs.
LYDIA A. BRADLEY. } Ejectment. (Five Cases Consolidated.)

And now comes the defendant herein, Lydia A. Bradley, by W. W. Hammond, H. M. Waggon*we*, and Chiperfield & Chiperfield, her attorneys, and moves the court to set aside the verdict heretofore rendered herein (by direction of the court), and to grant her a new trial for the following reasons, viz:

First. Because the verdict is against the law.

Second. Because the verdict is against the evidence.

Third. Because upon the trial of said cause the court refused to admit proper evidence offered upon the part of the defendant.

Fourth. Because, upon said trial, the court permitted, against the objection — the said defendant, improper evidence to be introduced before said jury, upon the part of the plaintiff.

Fifth. Because the court erred in striking from the files the second plea filed by the defendant herein.

Sixth. Because the court erred in instructing the jury to find for the plaintiff and against the defendant.

61 Seventh. Because the ruling upon the evidence, as made by this court, and its direction to the jury to find the issues for the plaintiff, is against the laws of the State of Illinois, and is repugnant to the constitution of the State of Illinois, and to the Constitution of the United States.

Eighth. Because the construction of the law, of this case, as made by the trial court, is opposed to the laws of the State of Illinois, and is repugnant to the constitution of the State of Illinois and to the Constitution of the United States.

Ninth. Because it appears from the evidence that the defendant has been in actual possession of the premises by tenants residing thereon, for more than seven years prior to the commencement of this suit, and if the plaintiff has proved a connected title from the Government, then the trust deed of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, was such equitable title as is contemplated by sec. 4, ch. 83, Rev. Stat. Ills.

Tenth. Because it appears from the evidence that the defendant has been in possession of the premises in controversy for more than seven years prior to the commencement of this suit, claiming to own the same, and has paid all taxes assessed thereon for said years under claim and color of title, viz: title derived by the mortgage of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, which, under sec. 6, ch. 83, Rev. Stat. bars plaintiff's recovery.

Eleventh. Because it appears from the evidence that the title held by McCune and afterward conveyed by Prettyman was subject to the trust deed of McCune to Johnson which was foreclosed in August 1879, and the period of redemption expired in November, 1881, by which the title of Prettyman was completely divested, and the plaintiff has not shown title to himself.

Twelfth. Because it appears from the evidence that the defendant went into possession of said premises in the summer or fall of
62 1872, after having filed her bill to foreclose the mortgage of McCune to Johnson and has continued in possession ever since, and has paid all the taxes on said premises and has foreclosed the said mortgage except as to taking out a master's deed on the certificate of purchase, and that while the time for taking out such deed has passed and she is no longer entitled to the deed, she is still a mortgagee in possession and the plaintiff as holder of the mortgagor's title cannot recover against her.

Thirteenth. That section 30, chapter 77, Rev. Stat. of the State of Illinois, providing that in case the holder of the certificate of purchase does not take out a deed thereon within five years after the expiration of the period of redemption the certificate shall become null and void, is unconstitutional and in violation of the constitution of the State of Illinois, and of the United States of America, because the same impairs the validity of a contract obligation.

Fourteenth. That sec. 30, ch. 77, Rev. Stat. Ill. is unconstitutional so far as it applies to contracts entered into prior to its enactment if

it impairs the validity or imposes new burdens upon the remedy, and it appears from the evidence that the mortgage under which defendant claims was given prior to the enactment of said statute, and that the provisions rendering the certificate of purchase null and void if the deed was not taken out within the period limited, was not in the statute as it existed at the time the mortgage was given.

Fifteenth. Because sec. 30, ch. 77, Rev. Stat. of Ill. as construed by the supreme court of Illinois has the effect of impairing the obligation of contracts in that it annuls the certificate of purchase, takes away all rights derived under the mortgage and decree, and relieves the mortgagor from the bar of the decree of foreclosure previously incurred.

63 Sixteenth. Because the said verdict is erroneous, illegal, and improper, for various good reasons appearing upon an inspection of said record.

W. W. HAMMOND,
HARRY M. WAGGONER,
CHIPERFIELD & CHIPERFIELD,
Attorneys for said Defendant."

(Filed Jun-5-1901.

J. C. SEVERNS,
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on June 12th A. D. 1901, the same being the twentieth day of said term of said court, the following among other proceedings were had and entered of record, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substitute, etc. } Ejectment.

Now on this day this cause coming on for a further hearing on said defendant's motion for a new trial in this cause heretofore made herein, the court after due consideration doth overrule and disallow said motion and the court enters judgment on the verdict heretofore rendered herein and that plaintiff recover possession of the premises described in said plaintiff's declaration herein in accordance with said verdict and that defendant pay the costs of this suit to be taxed.

It is therefore considered, adjudged and decreed by the court that the plaintiff H. W. Lightcap, do have and recover of and from the defendant, Lydia Bradley, &c. his costs and charges by him about this suit in this behalf expended, to be taxed, and that execution may issue therefor, and that writ of possession be and the same is hereby awarded for the said premises in favor of said plaintiff H. W. Lightcap. To all of which the said defendant by her attorneys excepts.

Whereupon the defendant by her attorneys prays an appeal to the supreme court of the State of Illinois, which is allowed
64 on her giving bond conditioned as provided by law in the sum of two thousand dollars ($2000) *dollars*, with security to be approved by the clerk of this court, said bond to be filed within thirty (30) days and bill of exceptions within 90 days from this date."

Said bill of exceptions, as herein before referred to was filed herein, on to-wit: July 17th, A. D. 1902.

Said appeal bond was filed herein as herein before referred to June 29, A. D. 1902.

UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Fulton, }

Pleas before the Honorable John A. Gray, one of the three judges of the ninth judicial circuit of the State of Illinois, and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the twenty-third day (being the fourth Monday) of September, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

Present: Honorable John A. Gray, judge. B. H. Taylor, State's attorney. J. C. Severns, clerk. L. C. Fouts, sheriff.

Attest: J. C. SEVERNS,
Circuit Clerk.

Court opened by proclamation.

65 And be it remembered that afterwards, to-wit: on October 10, A. D. 1901, the same being one of the regular days of said term of said court, Hon. G. W. Thompson, judge presiding, the following among other proceedings were had and entered of record in said court, in the words and figures following, that is to say:

W. H. LIGHTCAP *vs.* LYDIA BRADLEY, Substituted, &c.	11566–11567–11568–11569–11617. Ejectment.

On this day comes the defendant herein by her attorneys, Chiperfield & Chiperfield and W. W. Hammond, and moves the court to redocket this suit herein and vacate and set aside judgment heretofore rendered herein at May term, A. D. 1901, of this court, and to grant unto her a new trial in said cause, under the statute in such case made and provided."

And be it remembered that afterwards, to-wit: on October 15th A. D. 1901, the same being one of the regular days of said court, Hon. John A. Gray, judge presiding, the following among other proceedings were had and entered of record in said cause, in the words and figures following, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, &c.
} 11566–11567–11568–11569–11617.
Ejectment.

And now on this day this cause coming to be heard upon the defendant's motion that the court vacate and set aside the judgment heretofore rendered herein and grant unto he- a new trial of this cause under the statute, the court after due consideration doth set aside the judgment of the court heretofore rendered herein at the May term, A. D, 1901, of this court and doth likewise grant unto said defendant a new trial, and this cause is continued to the next regular term of this court."

66 And be it remembered that afterwards, to-wit: on October 17th, A. D. 1901, the same being one of the regular days of said term of said court, the following among other proceedings were had and entered of record in said court, in the words and figures following, that is to say:

"Ordered by the court that all causes, motions and other matters not otherwise disposed of, pertaining to the court, be and the same are hereby continued until the next term of this court, and that this court do now adjourn till the next regular term of this court in course."

UNITED STATES OF AMERICA, } *ss:*
State of Illinois, County of Fulton, }

Pleas before the Honorable John A. Gray, one of the three judges of the ninth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the thirteenth (being the second Monday) of January, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

Present: Honorable John A. Gray, judge. B. H. Taylor, State's attorney. J. C. Severns, clerk. L. C. Fouts, sheriff.

Attest: J. C. SEVERNS, *Clerk.*

Court opened by proclamation.

67 And be it remembered that afterwards, to-wit: on January 13th, A. D. 1902, the same being one of the regular days of

said term of said court, the following among other proceedings were had and entered of record in said court, in the words and figures following, that is to say:

W. H. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, &c. } Ejectment. 11566, &c.

On this day it is ordered by the court that this cause be continued to the next regular term of this court, as per stipulation on file, which said stipulation being in writing is in the words and figures, as follows:

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the same may and should be continued to the next term of said court.

WALLACE & LACEY,
Att'ys for Pl'ff.
HAMMOND, CHIPERFIELD &
CHIPERFIELD, *Att'ys for Def't.*

And be it remembered that afterwards, to-wit: on January 29, A. D. 1902, the following among other proceedings were had and entered of record in said court, in the words and figures following, that is to say:

"Ordered by the court that all causes, motions, and other matters not otherwise disposed of pertaining to this court, be and the same are hereby continued until the next term of this court, and that this court do now adjourn so to stand until the next regular term thereof in course.

68 UNITED STATES OF AMERICA, } *ss:*
State of Illinois, County of Fulton, }

Pleas before the Honorable John J. Glenn, one of the three judges of the ninth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county, on the nineteenth day (the same being the third Monday) of May, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

Present: Honorable John J. Glenn, judge. B. H. Taylor, State's attorney. J. C. Severns, clerk. L. C. Fouts, sheriff.

Attest: J. C. SEVERNS, *Clerk.*

Court opened by proclamation.

And be it remembered that afterwards, to-wit: on May 26, A. D. 1902, the same being one of the regular days of said term, the fol-

lowing among other proceedings were had and entered of record in said court, in the words and figures following, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted, etc. } Ejectment.

Now on this day the cause coming on come the respective parties hereto by their attorneys, and whereupon the right of trial by jury is waived, and this cause is thereupon set for trial on the first day of the next term of this court."

69 And be it remembered that afterwards, to-wit: on June 19, A. D. 1902, the same being one of the regular days of said term of said court, the following among other proceedings were had and entered of record in said court, in the words and figures following, that is to say:

"Ordered by the court that all cause motions and other matters not otherwise disposed of pertaining to this court, be and the same are hereby continued until the next term of this court, and that court do now adjourn so to stand until the next regular term thereof in course."

70 STATE OF ILLINOIS, } *ss:*
Fulton County, }

In the Circuit Court, September Term, A. D. 1902.

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted as Defendant, etc. } Ejectment.

Heard before Hon. George W. Thompson, judge presiding, without a jury, October 17th, A. D. 1902.

Appearing: E. A. Wallace, Lyman Lacey, Jr., Geo. B. Foster, H. W. Masters, counsel for plaintiff. W. W. Hammond, and Chiperfield & Chiperfield, counsel for defendant.

Be it remembered, that this cause coming on to be heard, at the September term A. D. 1902, of the Fulton county circuit court, to-wit, on October 17th A. D. 1902, the plaintiff to maintain the issues in his behalf, offered in evidence the following testimony, that is to say:

At the conclusion of the opening statements, counsel for plaintiff move the court to strike from the files defendant's special plea, filed May 24th, 1901, averring twenty years' limitation, which motion is allowed by the court on the ground the same is covered by the plea of general issue, to which ruling of the court counsel for defendant then and there excepted.

71 (Mr. WALLACE:) Now we want to introduce the declarations in the five suits and the summons, for the purpose of showing the land in controversy, and the time of the commencement of the suit.

(By the COURT:) The summons is introduced for the purpose of showing when the suit was begun?

(Mr. WALLACE:) Yes sir.

(By the COURT:) And the declarations to show the description of the land?

(Mr. WALLACE:) Yes sir.

(Mr. CHIPERFIELD:) We will object to the introduction of these summons and declarations. They are in the record as part of the files.

(By the COURT:) I don't believe they are competent evidence. They are part of the record. Anybody has a right to pick them up and read it. I don't see any reason to encumber the record. If they are admitted they will have to go in a bill of exceptions. They are already in the record of the case. I will sustain the objection for that reason.

To which ruling of the court counsel for plaintiff then and there excepted.

(Mr. WALLACE:) Now there is a stipulation here filed by the parties, in reference to the use of exemplified and certified copies of patents of the General Land Office, and deeds and mortgages, and the records and files in the proceedings of the case of Lydia Bradley, that either side may introduce, and use certified copies without further notice. I will introduce the stipulation.

(By the COURT:) Let it go in.

A copy of said stipulation so introduced in evidence is attached hereto and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

72 "STATE OF ILLINOIS, }
Fulton County, } *ss:*

In the Fulton County Circuit Court, May Term, 1901.

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substituted as Defendant, etc. } Ejectment.

It is hereby stipulated and agreed by and between the plaintiff and the defendant in the above entitled suit that on the trial of said cause either parties to said suit may introduce and read in evidence exemplified or certified copies of patents from the records of the General Land Office, also of copies of deeds, mortgages, trust deeds and releases from the records of Mason and Tazewell counties, Illinois, or either county which relates to the land in controversy; also certified copies of the whole or any part of the files, papers and

records in the chancery suit lately pending in Mason county circuit court, State of Illinois, entitled Lydia Bradley Clark *vs.* B. S. Prettyman *et al.* without proof of loss or inability to produce the original instrument; said copies to be used without objection that they are copies.

It is further stipulated that E. G. Johnson who was named as trustee in the trust deed from Absalom McCune to said Johnson as trustee, to secure indebtedness of said McCune to said Lydia Bradley on the land in controversy, was the same identical E. G. Johnson who was the solicitor in the said suit of said defendant against B. S. Prettyman *et al.* foreclosing said trust deed. And the plaintiff in this suit waives objections to the form of questions in the depositions of Lydia Bradley taken in this suit, for use.

WALLACE & LACEY,
Att'ys for Pl't'ff.
HAMMOND, WAGGONER & CHIPERFIELD,
Att'ys for Def't.

73 (Mr. WALLACE:) Now I offer an exemplified copy of a patent from the United States to Abijah Taylor, Jr., for the east half of the north-east quarter, and the east half of the south-east quarter of section 22, in township 23 north, of range 6 west, of the district of lands subject to entry, Springfield, Ill. A copy of said patent so introduced in evidence is annexed hereto and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11th, 1847, John B. Davis, father and heir at law of William R. Davis, deceased, late a private in Company "B" Palmetto regiment, South Carolina volunteers, having deposited in the General Land Office, a warrant in his favor, numbered 20,503.

There is therefore granted by the United States unto Abijah Taylor, Junior, assignee of said John B. Davis, and to his heirs, the east half of the north-east quarter, and the east half of the south-east quarter of section twenty-two, in township twenty-three north of range six west, in the district of lands subject to sale at Springfield Illinois, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office, by the surveyor general, which said tracts have been located in satisfaction of the above mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11th, 1847.

To have and to hold the said parts of said section of land, with

the appurtenances thereof, unto the said Abijah Taylor, Junior, and to his heirs and assigns forever.

74 In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

By the President:

MILLARD FILLMORE,
[L. S.] By ALEX. McCORMICK, *Ass't Sec'y.*

Recorded, vol. 74, page 387.

E. S. TERRY,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 16, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Abijah Taylor, Junior, founded on warrant location No. 20503, for 160 acres, act of 1847, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX,
Commissioner of General Land Office.

Pl'tff's Ex. 2. 5-24-1901. J. V. H.

(Mr. WALLACE:) The next is exemplified copy of a patent from the United States to Abijah Taylor, Junior, for the west half of the south-east quarter of section 15, and the west half of the
75 north-east quarter of section 22-23-6.

(By the COURT:) Now how much of that is in this case?

(Mr. WALLACE:) The north-east quarter of 22. There is 80 acres in this patent and 80 acres in the former patent.

(Mr. HAMMOND:) We will examine the one offered while they are examining the next.

(By the COURT:) That is all right. I will listen to the objection and pass on it. I don't know that there is any object in making it at each one without there is something special to each one. A general objection you can make at the end of them or any where.

A copy of the patent so introduced in evidence, marked Plaintiff's

Exhibit 3, is attached hereto and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11th, 1847, William McFadden, armorer in Captain Mordecai's company, ordnance department, having deposited in the General Land Office, a warrant in his favor numbered 71,177;

There is therefore granted by the United States, unto Abijah Taylor, Junior, assignee of said William McFadden, and to his heirs, the west half of the south-east quarter of section fifteen, and the west half of the north-east quarter of section twenty-two in township twenty-three north of range six west in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres according to the official plat of the survey of the
76 said land returned to the General Land Office, by the surveyor general, which said tracts have been located in satisfaction of the above mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11th 1847.

To have and to hold the said parts of said section of land, with the appurtenances thereof, unto the said Abijah Taylor, Junior, and to his heirs and assigns forever.

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

By the President:

MILLARD FILLMORE,

[L. S.] By ALEX. McCORMICK, *Ass't Sec'y.*

Recorded vol. 74, page 373.

E. S. TERRY,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 16, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Abijah Taylor, Junior, founded on warrant location No. 71177, for 160 acres, act of 1847, is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my
77 name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. W. LAMOREUX,
Commissioner of General Land Office.

Pl't'ff's Ex. 3 5/24/1901 J. V. H.

(Mr. WALLACE:) The next is an exemplified copy of a patent from the United States to Abijah Taylor, Junior, for the south-west quarter of section 23–23–6. All of this is in controversy.

A copy of said patent so introduced in evidence is annexed hereto and made part of this bill of exceptions, marked Plaintiff's Exhibit 4, and is in words and figures as follows, to-wit:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11th, 1847, Dennis Dallis, father and heir at law of Thomas E. Dallis, deceased, late a private in Company "B" regiment, South Carolina volunteers, having deposited in the General Land Office a warrant in his favor, numbered 61,900;

There is therefore granted by the United States unto Abijah Taylor, Junior, assignee of said Dennis Dallis, and to his heirs, the south-west quarter of section twenty-three, in township twenty-three north, of range six west, in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the
78 General Land Office, by the surveyor general, which said tract has been located in satisfaction of the above mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11th, 1847.

To hand and to hold the said quarter section of land, with the appurtenances thereof, unto the said Abijah Taylor, Junior, and to his heirs and assigns forever.

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

By the President:

[L. S.]

MILLARD FILLMORE,
By ALEX. McCORMICK, *Ass't Sec'y.*

Recorded vol. 74, page 381.

E. S. TERRY,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 16, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Abijah Taylor, Junior, founded on warrant location No. 61900, for 160 acres, act of 1847, is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of
79 Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX,
Commissioner of General Land Office.

Pl'tff's Ex. 4, 5/24/1901. J. V. H.

(Mr. WALLACE:) The next is a certified copy of a patent from the United States to Abijah Taylor, Junior, for the south-east quarter of section 23, township 23, range 6; also 160 acres of the land here in controversy.

A copy of said patent so introduced in evidence, marked Plaintiff's Exhibit 5, is hereto annexed and made part of this bill of exceptions, and is in words and figures as follows, to wit:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11th, 1847, Nancy Gray, widow, Hugh B. Gray, James H. Gray, Samuel D. Gray, Charles C. P. Gray and John Y. Gray, children and heirs at law of John Gray, deceased, private — Captain Nelson's company, First regiment Georgia volunteers, having deposited in the General Land Office, a warrant in their favor, numbered 69,019:

There is therefore granted by the United States unto Abijah Taylor, Junior, assignee of said Nancy Gray, Hugh B. Gray, and James H. Gray, in their own right, and also of said Nancy Gray as guardian of said Samuel D. Gray, Charles C. P. Gray and John Y. Gray, and to his heirs, the south-east quarter of section twenty-three, in township twenty-three north, of range six west, in the district of
80 lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office, by the surveyor general, which said tract has been located in satisfaction of the above mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11th, 1847.

To have and to hold the said quarter section of land, with the appurtenances thereof, unto the said Abijah Taylor, Junior, and to his heirs and as-igns forever.

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

By the President:

[L. S.] MILLARD FILLMORE,
By ALEX. McCORMICK, *Ass't Sec'y.*

Recorded, vol. 74, page 382.

E. S. TERRY,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 16, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Abijah Taylor, Junior, founded on warrant location No. 69019, for 160 acres, act of 1847, is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my name
81 and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX,
Commissioner of General Land Office.

Pl'tff's Ex. 5 5/24/1901. J. V. H.

(Mr. WALLACE:) The next we offer is a certified copy of a patent from the United States to Abijah Taylor, Junior, for the north-east quarter of section 26, township 23–6. This contains 80 acres of the land in controversy.

A copy of said patent so introduced in evidence is annexed hereto and made a part of this bill of exceptions, marked Plaintiff's Exhibit 6, and is in words and figures as follows, to-wit:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11th, 1847, Mary C. Rowell, mother and heir at law of William E. Rowell, deceased, late a private in Company B regiment, South Carolina volunteers, having deposited in the General Land Office, a warrant in her favor, numbered 50,634:

There is therefore granted by the United States unto Abijah Taylor, Junior, assignee of said Mary C. Rowell, and to his heirs, the north-east quarter of section twenty-six, in township twenty-three north of range six west, in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres,
82 according to the official plat of the survey of the land returned to the General Land Office, by the surveyor general, which said tract has been located in satisfaction of the above mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11th, 1847.

To have and to hold the said quarter section of land, with the appurtenances thereof, unto the said Abijah Taylor, Junior, and to his heirs and assigns forever.

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

By the President:

MILLARD FILLMORE,

[L. S.] By ALEX. McCORMICK, *Ass't Sec'y.*

Recorded vol. 74, page 385.

E. S. TERRY,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 16, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Abijah Taylor, Junior, founded on warrant location No. 50634, for 160 acres, act of 1847, is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my
83 name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX.
Commissioner of General Land Office.

Pl'tiff's Ex. 6 5/24/1901 J. V. H.

(Mr. WALLACE:) The next we offer is an exemplified copy of a patent from the United States to Abijah Taylor, Junior, for the north-west quarter of section 26-23-6, containing 80 acres of land in controversy.

(Mr. CHIPERFIELD:) Now we want to make the formal objection.

These patents are all objected to on the ground that they are incompetent, irrelevant and immaterial, and for the further reason that no proper foundation has been laid for the introduction of these patents, and for the further reason that upon the face of these patents they are not connected with the land in controversy in this case.

(By the COURT:) Well it is admitted for what it is worth.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said patent so introduced is annexed hereto marked Plaintiff's Exhibit 7, and made a part of this bill of exceptions, and is in words and figures as follows, to wit:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11th, 1847, Henry Bradburn, late a private in Captain Arnold's company, Second regiment,
84 United States dragoons, having deposited in the General Land Office a warrant in his favor, numbered 61,571;

There is therefore granted by the United States unto Abijah Taylor, Junior, assignee of said Henry Bradburn, and to his heirs, the north-west quarter of section twenty-six, in township twenty-three north, of range six west, in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, which said tract has been located in satisfaction of the above mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11th, 1847.

To have and to hold the said quarter section of land, with the appurtenances thereof, unto the said Abijah Taylor, Junior, and to his heirs and assigns forever.

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

By the President:

MILLARD FILLMORE,

[L. S.] By ALEX. McCORMICK, *Ass't Sec'y.*

Recorded vol. 74, page 374.

E. S. TERRY,

Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 16, 1894.

I, S. W. Lamoreux, Commissioner of the General Land
85 Office, do hereby certify that the annexed copy of patent, in favor of Abijah Taylor, Junior, founded on warrant location No. 61,571, for 160 acres, act of 1847, is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX,
Commissioner of General Land Office.

Pl'ff's Ex. 7 5/24/1901 J. V. H.

(Mr. WALLACE:) The next thing we offer, your honor, is a warranty deed from Abijah Taylor, Junior, and Mary E. Taylor, his wife, to David Breedlove, dated on the third day of November, 1854, for all of the lands in controversy, and also contains other lands.

(Mr. CHIPERFIELD:) We object to this for the reason it is incompetent, irrelevant and immaterial, and for the further reason it appears to be an exemplification not of the original deed, but an exemplification of a certified deed, and for the further reason that the certificate of acknowledgment of the notary is not in due form, and for the further reason that the certification itself is not in due form, and in conformity with the act of Congress concerning the authenticity of such instruments. We also say at this time, while it might not go to the admissibility of the deed, that this is not a true copy of the deed, and we will reserve the right to introduce evidence on that point at the proper time.

(By the COURT:) Oh they are not to be admitted if there
86 is anything that can be pointed out at any time why any of these should be excluded. Under this general stipulation I think it goes in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said warranty deed, so introduced in evidence is annexed hereto, marked Plaintiff's Exhibit 8, and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

Abijah Taylor, Jr. and Mary E. Taylor, his wife of Marion county, in the State of Indiana convey and warrant to David Breedlove of Morgan county in the State of Indiana for the sum of seventeen thousand and five hundred dollars.

The following real estate in the State of Illinois, to-wit:

The south half of the south-west quarter of section one, the south-east quarter of the south-east quarter of section two, and the north-west quarter of the north-west quarter of section twelve in township

twenty-three north of range six west in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres.

The south-east quarter of section fourteen in twonship twenty-three north of range six west in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres.

The north-west quarter of section twenty-three in township twenty-three north of range six west containing one hundred and sixty acres.

The east half of the lot number one of the north-west quarter the north-east quarter of the south-west quarter, and the west half of the south-east quarter of section one in township twenty-
87 three north of range six west, containing one hundred and sixty acres.

The east half of the north-east quarter, and the east half of the south-east — of section fifteen in twonship twenty-three north of range six west, containing one hundred and sixty acres.

The east half of the north-east quarter and the east half of the south-east quarter of section twenty-two township twenty-three north of range six west containing one hundred and sixty acres.

The north-east quarter of section twenty-six, in township twenty-three north of range six west, containing one hundred and sixty acres.

The north-west quarter of section fourteen in township twenty-three north range six west, containing one hundred and sixty acres.

The west half of the northeast quarter, and the east half of the north-west quarter of section twelve, in township twenty-three north of range six west, containing one hundred and *six* acres.

The south-west quarter of section twenty-three township twenty-three north of range six west, containing one hundred and sixty acres.

The north-east quarter of section fourteen, township twenty-three north of range six west, containing one hundred and sixty acres.

The south-east quarter of section twenty-three in township twenty-three nordh of range six west, containing one hundred and sixty acres.

The north-west quarter of section twenty-three in township twenty three north of range six west, containing one hundred and
88 sixty acres.

The west half of the south-east quarter of section fifteen and the west half of the northeast quarter of section twenty-two in township twenty-three north of range six west containing one hundred and sixty acres.

The south-west quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres.

The south-east quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres.

The east half of the north-east quarter, and the east half of the

south-east quarter of section eleven in township twenty-three north of range six west, containing one hundred and sixty acres.

The north half of the south-west quarter, the south-west quarter of the north-west quarter, and the north-west quarter of the south-east quarter of section twelve in township twenty-three north of range six west, containing one hundred and sixty acres.

The north-east quarter of section twenty-three in township twenty-three north of range six west containing one hundred and sixty acres.

The south-west quarter of section fourteen in township twenty-three north of range six west containing one hundred and sixty acres.

The west half of lot numbered one of the north-west quarter and the north-west quarter of the south-west quarter of section one. The east half of the lot numbered one of the north-east quarter and the north-east quarter of the south-east quarter of section two township twenty-three north of range six west, containing one hundred and sixty acres.

89 The south-west quarter of the south-east quarter and the south-east quarter of the south-west quarter of section twelve in township twenty-three north of range six west, containing eighty acres, all of the above described lands subject to sale at Springfield, Illinois.

In witness whereof the said Abijah Taylor Jr. and Mary E. Taylor, his wife, have hereunto set their hands and seals this the third day of November A. D. 1854.

ABIJAH TAYLOR. [L. S.]
MARY E. TAYLOR. [L. S.]

STATE OF INDIANA, }
Morgan County. }

Before the undersigned a notary public in and for said county this the third day of November A. D. 1854, Abijah Taylor Jr. and Mary E. Taylor his wife acknowledged the execution of the annexed deed.

In testimony whereof I have hereunto set my hand and seal of office at Monrovia this the 3rd day of November A. D. 1854.

[L. S.] WM. P. WRIGHT,
Notary Public.

STATE OF ILLINOIS, }
County of Tazewell, } ss:

I, A. L. Champion, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of a deed as recorded in volume 31 of deeds upon page 179 of the records of my office on June 14th, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Pekin this 21st day of September, A. D. 1894.

A. L. CHAMPION, *Clerk.*

[Seal of the Circuit Court of Tazewell County.]

STATE OF ILLINOIS, }
County of Tazewell, } ss:

90 I, N. W. Green, one of the judges of the eighth judicial circuit of the State of Illinois, do hereby certify that A. L. Champion, whose name is subscribed to the foregoing certificate of atteastation, now is, and was, at the time of signing and sealing the same, clerk of the circuit court of Tazewell county aforesaid (which said county is in said judicial circuit) and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such, in all counts of record and elsewhere; and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal this 21st day of September A. D. 1894.

N. W. GREEN. [SEAL.]

STATE OF ILLINOIS, }
County of Tazewell, } ss:

I, A. L. Champion, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that N. W. Green, whose genuine signature is appended to the foregoing certificate, was at the time of signing the same, one of the judges of the eighth judicial circuit of the State of Illinois, (of which judicial circuit the said Tazewell county forms a part), duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Pekin this 21st day of September A. D. 1894.

A. L. CHAMPION, *Clerk.*

[Seal of the Tazewell County Circuit Court.]

STATE OF INDIANA, }
County of Morgan, } ss:

91 I, Wm. A. Comer, clerk of the Morgan circuit court in and for said county of Morgan, which said court is a court of record, do hereby certify that Wm. P. Wright, whose name appears to be attached to the certificate of acknowledgment of the annexed certified copy of a warranty deed from Abijah Taylor Jr. and Mary E. Taylor, his wife, to David Breedlove, was on the third day of November A. D. 1874, a notary public in and for said county

of Morgan, and State aforesaid duly commissioned and qualified; and I do further certify that said certified copy of said deed is executed and acknowledged in conformity with the laws of the State of Indiana, as they were in force on the 3rd day of November, A. D. 1854.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Martinsville, county of Morgan and State of Indiana, this 12th day of July A. D. 1895.

WM. A. COMER.
Clerk Morgan Circuit Court.

[Seal Morgan County, Ind., Circuit Court.]

STATE OF ILLINOIS, }
Mason County, } *ss:*

I, C. E. Walsh, clerk of the circuit court, and *ex-officio* recorder of deeds, in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true perfect and complete copy of a certified copy warranty deed from Abijah Taylor Jr. and wife to David Breedlove, as recorded in Book 72 of Deeds, at page 287 of the records of my office, on the 16th day of May 1901.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Havana, Ill., this 18th day of May A. D. 1901.

C. E. WALSH, *Clerk.*

[Seal of Mason County Circuit Court.]

Pl'tff's Ex. 8 5/24/1901. J. V. H.

92 (Mr. WALLACE:) Now your honor, I will introduce a warranty deed from Abijah Taylor and Mary E. Taylor, his wife, to David Breedlove, for the lands in controversy, dated the third day of November 1854.

(Mr. CHIPERFIELD:) We object to the introduction of Plaintiff's Exhibit 9, for the reason that upon the face of the deed it does not appear to be connected with the lands in controversy in this case. It is land which purports to be in township 23 north of range 6 west, in the district of lands subject to sale in Springfield, Illinois, and for the further reason that this deed does not purport to be signed by the person who in the commencing clause of the deeds purports to have executed it. It is from Abijah Taylor Jr. and signed Abijah Taylor, and for the further reason that the deed is not acknowledged in accordance with the laws of the State of Indiana as to the requirements of the examination of husband and wife, and that they were personally known to the officer taking the acknowledgment, in accordance with the statute at that time: and also that it is incompetent, irrelevant and immaterial.

(Mr. WALLACE:) In connection with these deeds we offer section 25 of the Revised Statutes of the State of Indiana, as appears in the

printed copy of the laws of the State in 1852, describing the form of the acknowledgment of deeds, together with the title page of the said statute, and the certificate of the secretary of state contained therein.

(Mr. CHIPERFIELD:) We object to the introduction of this statute as incompetent, irrelevant and immaterial, that it is not an exemplified copy of the statute, that it does not purport to be published by authority, and does not comply with the statutes of the
93 State of Illinois concerning the admission of statutes of sister States.

Which objection was overruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A copy of said warranty deed so introduced in evidence is annexed hereto, marked Plaintiff's Exhibit 9, and made part of this bill of exceptions, and is in words and figures as follows, to-wit:

Abijah Taylor, Jr. and Mary E. Taylor, his wife, of Marion county, in the State of Indiana, convey and warrant to David Breedlove, of Morgan county, in the State of Indiana, for the sum of seventeen thousand and five hundred dollars.

The following real estate in the State of Illinois, to-wit:

The south half of the south-west quarter of section one.

The south-east quarter of the south-east quarter of section two, and the north-west quarter of the north-west quarter of section twelve in township twenty-three north of range six west in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres.

The southeast quarter of section fourteen in township twenty-three north of range six west, in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres.

The north-west quarter of section twenty-three in township twenty-three north of range six west, containing one hundred and sixty acres.

The east half of lot number one of the north-west quarter of the north-east quarter of the south-west quarter, and the west half
94 of the south-east quarter of section one in township twenty-three north of range six west, containing one hundred and sixty acres.

The east half of the north-east quarter, and the east half of the south-east — of section fifteen, in township twenty-three north of range six west, containing one hundred and sixty acres.

The east half of the north-east quarter and the east half of the south-east quarter of section twenty-two, township twenty-three north of range six west, containing one hundred and sixty acres.

The north-east quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres.

The north-west quarter of section fourteen in township twenty-three north of range six west, containing one hundred and sixty acres.

The west half of the north-east quarter, and the east half of the north-west quarter of section twelve, in township twenty-three north of range six west, containing one hundred and *six* acres.

The south-west quarter of section twenty-three township twenty-three north of range six west, containing one hundred and sixty acres.

The north-east quarter of section fourteen, township twenty-three north of range six west, containing one hundred and sixty acres.

The south-east quarter of section twenty-three, in township twenty-three north of range six west, containing one hundred and sixty acres.

The north-west quarter of section twenty-six, in township twenty-three north of range six west, containing one hundred and sixty acres.

95 The west half of the south-east quarter of section fifteen, and the west half of the north-east quarter of section twenty-two in township twenty-three north of range six west, containing one hundred and sixty acres.

The south-west quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres.

The south-east quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres.

The east half of the north-east quarter, and the east half of the south-east quarter of section eleven, in township twenty-three north of range six west, containing one hundred and sixty acres.

The north half of the south-west quarter, the south-west quarter of the north-west quarter, and the north-west quarter of the south-east quarter of section twelve, in township twenty-three north of range six west, containing one hundred and sixty acres.

The north-east quarter of section twenty-three in township twenty-three north of range six west, containing one hundred and sixty acres.

The south-west quarter of section fourteen in township twenty-three north of range six west, containing one hundred and sixty acres.

The west half of lot numbered one of the north-west quarter and the north-west quarter of the south-west quarter of section one.

The east half of the lot numbered one of the north-east quarter, and the north-east quarter of the south-east quarter of section
96 two, township twenty-three north of range six west, containing one hundred and sixty acres.

The south-west quarter of the south-east quarter, and the south-east quarter of the southwest quarter of section twelve, in township twenty-three north, of range six west, containing eighty acres, all of the above described land subject to sale at Springfield, Illinois.

In witness whereof the said Abijah Taylor Jr. and Mary E. Tay-

lor, his wife, have hereunto set their hands and seals this the third day of November, A. D. 1854.

ABIJAH TAYLOR. [L. S.]
MARY E. TAYLOR. [L. S.]

STATE OF INDIANA,)
Morgan County.)

Before the undersigned, a notary public in and for said county, this the third day of November, A. D. 1854, Abijah Taylor, Jr., and Mary E. Taylor, his wife, acknowledged the execution of the annexed deed.

In testimony whereof I have hereunto set my hand and seal of office at Monrovia this the 3rd day of November A. D. 1854.

[SEAL.] WM. P. WRIGHT,
Notary Public.

STATE OF ILLINOIS,)
County of Tazewell,) *ss:*

I, A. L. Champion, clerk of the circuit court in and for said county in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of a deed as recorded in volume 31 of deeds upon page 179 of the records of my office on June 14th, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Pekin this 21st day of September, A. D. 1894.

97 A. L. CHAMPION, *Clerk.*

[Seal of Circuit Court of Tazewell County.]

STATE OF ILLINOIS,)
County of Tazewell,) *ss:*

I, N. W. Green, one of the judges of the eighth judicial circuit of the State of Illinois, do hereby certify that A. L. Champion, whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of signing and sealing the same, clerk of the circuit court of Tazewell county aforesaid (which county is in said judicial circuit) and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere; and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 21st day of September A. D. 1894.

N. W. GREEN. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Tazewell, }

I, A. L. Champion, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that N. W. Green, whose genuine signature is appended to the foregoing certificate, was at the time of signing the same, one of the judges of the eighth judicial circuit of the State of Illinois (of which judicial circuit the said Tazewell county forms a part), duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and
98 affixed the seal of said court, at my office in Pekin this 21st day of September A. D. 1894.

A. L. CHAMPION, *Clerk.*

[Seal of the Circuit Court of Tazewell County.]

STATE OF INDIANA, } ss:
County of Morgan, }

I, Wm. A. Comer, clerk of the Morgan circuit court in and for said county of Morgan, which said court is a *cort* of record, do hereby certify that Wm. P. Wright, whose name appears to be attached to the certificate of acknowledgment of the annexed certified copy of a warranty deed from Abijah Taylor Jr. and Mary E. Taylor, his wife, to David Breedlove, was on the third day of November A. D. 1854, a notary public in and for said county of Morgan, and State aforesaid, duly commissioned and qualified; and I do further certify that said certified copy of said deed is executed and acknowledged in conformity with the laws of the State of Indiana, as they were in force on the third day of November A. D. 1854.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Martinsville, county of Morgan, and State of Indiana, this 12th day of July A. D. 1895.

WM. A. COMER,
Clerk Morgan Circuit Court.

[Seal of Circuit Court of Morgan County, Indiana.]

No. 970.

STATE OF ILLINOIS, } ss:
Mason County, }

This instrument was filed for record in the recorder's office of Mason county aforesaid, on the 16th day of May A. D. 1901, at 9:30 o'clock a. m., and recorded in Book 72 of Deeds on page 287.

C. E. WALSH, *Recorder.*

Fee $4.10.

Pl'tffs' Ex. 9 5 24 1901 J. V. H

99 A copy of the title page of the Revised Statutes of the State of Indiana of 1852, together with section 25, chapter 23 of same statute, and the certificate of the secretary of state of Indiana contained in said statute, is annexed hereto and made part of this bill of exceptions, and is in words and figures as follows, to-wit:

THE

REVISED STATUTES

OF THE

STATE OF INDIANA.

THE

REVISED STATUTES

OF THE

STATE OF INDIANA,

Passed at the thirty-sixth session of the General Assembly.

Also sundry acts, ordinances, and public documents directed to be printed along with the said statutes, to which are prefixed the Constitution of the United States and of the State of Indiana.

Volume i.

Printed and published according to law.

Indianapolis:
J. P. Chapman, State printer.
1852.

"SEC. 25. The following or any other form substantially the same, shall be a good or sufficient form of acknowledgment of any deed or mortgage: "Before me, E. F. (a judge or justice, as the case may be) this — day of ——, A. B. acknowledged the execution of the annexed deed, (or mortgage as the case may be.)"

—— ——.

"Office of secretary of state.

INDIANAPOLIS, 29*th October*, 1852.

I, Charles H. Test, secretary of state, do certify that the statutes, and the constitution of the State of Indiana, contained in this volume, have been examined and compared with, and are
100 found to be correctly printed from, the enrolled statutes and constitution on file in my office, with exception of the words included (thus) inserted to aid the sense, and the following errata:

Page 121, 17th line: The word "he" before the word "respectively" should be stricken out.

Page 166, sec. 2, 2nd line: The word "on" before the word "certificate" should read "or."

Page 305, sec. 2, 2nd line: The word "at" before the words "any game" should be "as."

Page 327, sec. 21, 10th line: The word "recovered" should read "received."

Page 336, sec. 33, 1st line: The word "in" should read "on."

Page 351, 2nd specification, 1st line: Before the words "general assembly" the word "the" should be inserted.

Page 352, sec. 3, 1st line: The word "purchaser" should read "purchase."

Page 365, sec. 2, 6th line: After the word "Lieutenant" the word "Colonel" should have been inserted.

Page 375, sec. 2, 2nd line: The word "give" should be inserted before the word "notice."

Page 442, sec. 21, 1st line: The word "the" should be inserted before the word "voters."

Page 446, sec. 53, 6th line: The word "indorse" should read "indorsed."

[SEAL.] CHARLES H. TEST,
Secretary of State.

(Mr. WALLACE:) Now the next thing your honor that we offer is a warranty deed from David Breedlove and Jane Breedlove, his wife, to Bales Breedlove, dated the first day of March 1855.

(Mr. CHIPERFIELD:) We object to the introduction of this deed, first because it is not a properly certified copy in that the official character of the clerk of the circuit court and the *ex-officio* recorder of Mason county is not properly certified, and that the cer-
101 tificate of acknowledgment to the purported deed is not in accordance with the laws of the State of Illinois, nor is there a proper certificate of conformity under the laws of the State of Indiana

(By the COURT:) Let it go in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said deed so introduced in evidence, is annexed hereto, marked Plaintiff's Exhibit 11, and made part of this bill of exceptions, and is in words and figures as follows, to-wit:

David Breedlove and Jane Breedlove, his wife, of Morgan county in the State of Indiana, convey and warrant to Bales Breedlove of Morgan county, in the State of Illinois, for the sum of ten thousand dollars, the following real estate in Mason & Tazewell county in the State of Illinois, section No. fourteen, the east half of the north east quarter of section No. fifteen (15) and the south east quarter of section No. fifteen (15) and section twenty-three (23) and the north east quarter of section twenty-two (22) and the east half of the south east quarter of section twenty-two and section twenty-six (26) all in township twenty-three north of range six west of the third principal

meridian in the district of lands subject to sale at Springfield, Illinois.

In witness whereof the said David Breedlove and Jane Breedlove, his wife, who hereby relinquishes her dower in said premises, have hereunto set their hands and seals this first day of March 1855.

DAVID BREEDLOVE. [SEAL.]
JANE BREEDLOVE. [SEAL.]

STATE OF INDIANA, }
Morgan County, } ss:

Before me, Wm. P. Wright, a notary public, in and for
102 said county, this first day of March 1855, David Breedlove and Jane Breedlove, his wife, being examined apart from her husband, each acknowledged the execution of the annexed deed.

Witness my hand and notarial seal.

[SEAL.] WM. P. WRIGHT,
Notary Public.

STATE OF ILLINOIS, }
Mason County. } ss:

I, Wm. M. Duffy, clerk of the circuit court and *ex-officio* recorder of Mason county, in the State aforesaid, and keeper of the records and files of said court and office, do hereby certify the above and foregoing to be a true, perfect and complete copy of a warranty deed, filed for record June 14, 1855, and recorded in Book "G" of Deeds, at page 424 thereof, as the same appears from the records of said court now in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Havana, this 22nd day of September A. D. 1894.

WM. M. DUFFY,
Clerk of the Circuit Court and ex-Officio Recorder Aforesaid.

[Seal of Mason County Circuit Court.]

STATE OF INDIANA, }
County of Morgan. } ss:

I, Wm. A. Comer, clerk of the Morgan circuit court in and for said county of Morgan, which said court is a court of record, do hereby certify that Wm. P. Wright, whose name appears to be attached to the certificate of acknowledgment of the annexed certified copy of a warranty deed from David Breedlove and Jane Breedlove, his wife, to Bales Breedlove, was on the first day of March A. D.
103 1855, a notary public in and for said county of Morgan, and State aforesaid, duly commissioned and qualified; and I do further certify, that said certified copy of said deed is executed and acknowledged in conformity with the laws of the State of Indiana, as they were in force on the first day of March, A. D. 1855.

In testimony whereof, I have hereunto set my hand and affixed the

seal of said court at Martinsville, county of Morgan and State of Indiana this 12" day of July A. D. 1895.

WM. A. COMER.
Clerk Morgan Circuit Court.

[Seal of Morgan County Circuit Court.]

Pl'tiff's Ex. 11, 5/24/1901. J. V. H.

(Mr. WALLACE:) The — a warranty deed from Bales Breedlove and Sarah Breedlove, his wife, to Thomas Breedlove, for the lands in controversy, dated 11th day of April 1866.

(Mr. CHIPERFIELD:) The further objection to Plaintiff's Exhibit 9, 10 and 11 is that the same upon their face do not purport to be connected with the lands in plaintiff's declaration.

(By the COURT:) Go on, and look at this last, or number 12.

(Mr. CHIPERFIELD:) Well we make the objection that the deed is incompetent, irrelevant and immaterial, and that it is not connected with the lands described in plaintiff's declaration.

(By the COURT:) Let it go in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said deed so introduced in evidence, is annexed hereto, marked Plaintiff's Exhibit 12, and made a part of this bill of
104 exceptions, and is in words and figures as follows, to-wit:

Revenue stamps to the amount of $15.00 on this instrument.

This indenture, made this eleventh day of April in the year of our Lord one thousand eight hundred and sixty-six, between Bales Breedlove and Sarah Breedlove, his wife, of Tazewell county, Illinois, of the first part, and Thomas Breedlove of the same place, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of sixteen thousand dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents, do grant, bargain and sell, unto the said party of the second part, his heirs and assigns, all the following described lot, piece or parcel of land, situated in the county of Tazewell and State of Illinois, to-wit: All of section fourteen (14), the east half of the north-east quarter and the south east quarter of section fifteen (15) all in township twenty-three north, range six, west of the third principal meridian, also the following described tracts of land in Mason county, Illinois, to-wit: The north east quarter and the east half of the south east quarter of section twenty-two (22), all of section twenty-three (23) and all of section twenty-six (26) all in township twenty-three (23) north, range six west of the third principal meridian, containing twenty-four hundred acres more or less. This conveyance is made subject to the payment by said Thomas Breedlove or his legal representatives of a mortgage from said Bales and wife to Richard W. Ireland, date May 19, 1865 for $1200, with accrued interest and interest to accrue. Together with, all and singu-

lar, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the
105 estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances: to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said Bales Breedlove and Sarah Breedlove, parties of the first part, hereby expressly waive, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim, interest and benefit whatever, in and to the above described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads. And the said Bales Breedlove, party of the first part, for himself, his heirs, executors and administrators, does covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivering of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, and in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former or other grants, bargains, sales, liens, taxes, assessments and incumbrances, of what kind or nature soever; and the above bargained premises, in the quite and peac-able possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend, except the said mortgage.

106 In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

BALES BREEDLOVE. [SEAL.]
SARAH BREEDLOVE. [SEAL.]

Signed, sealed and delivered in presence of

ELIZA J. BREEDLOVE.
L. R. MARTIN.

STATE OF INDIANA, } ss:
Marion County, }

I, Luther R. Martin, a commissioner for Illinois in Indiana, in and for said county, in the State aforesaid, do hereby certify that Bales Breedlove and Sarah Breedlove, his wife, personally known to me as the same persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowl-

edged that they signed, sealed and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth. And the said Sarah Breedlove, wife of the said Bales Breedlove, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she do- not wish to retract the same.

Given under my hand and official seal this twenty-ninth day of May, 1867.

[SEAL.] LUTHER R. MARTIN,
Commissioner for Illinois in Indiana.

107 STATE OF ILLINOIS, }
Mason County, } *ss:*

I, Wm. M. Duffy, clerk of the circuit court and *ex-officio* recorder of Mason county in the State of Illinois and keeper of the records and files of said court and office do hereby certify the above and foregoing to be a true, perfect and complete copy of a warranty deed filed for record in my office June 1, 1867 and recorded in Book "Y" of Deeds at page 53 thereof, as the same appears from the records of said court now in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Havana, Mason county, Illinois, this second day of July A. D. 1895.

[SEAL.] WM. M. DUFFY,
Clerk of the Circuit Court and ex-Officio Recorder of said County of Mason.

STATE OF ILLINOIS, }
Sangamon County, City of Springfield, } *ss:*

I, W. H. Hinrichsen, secretary of state of the State of Illinois, and keeper of the records of said office, do hereby certify that Luther R. Martin, Esq., whose name appears signed to the acknowledgment of the annexed certified copy of warranty deed and before whom the said deed purports to have been acknowledged, was, on the twenty-ninth day of May A. D. 1867 (the date of such acknowledgment) an acting commissioner for Illinois in Indiana in and for the county of Marion in the said State of Indiana, duly commissioned, sworn and authorized to take the same; and full faith and credit is due to all his official acts.

108 In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of State; done at the city of Springfield this 8th day of July A. D. 1895.

[SEAL.] W. H. HINRICHSEN,
Secretary of State of the State of Illinois.

Pl'tff's Ex. 12 5/24/1901 J. V. H.

(Mr. WALLACE:) The next thing we offer is a warranty deed from Thomas Breedlove and Eliza Breedlove, his wife, to Benjamin S. Prettyman, dated on the 8th day of October 1867, for the lands in controversy, together with other lands.

(Mr. CHIPERFIELD:) We object to this exhibit on the ground it is incompetent, irrelevant and immaterial, and that the land described in the deed is not connected with the lands mentioned in the plaintiff's declaration, and for the reason there is not a proper acknowledgment of this deed, in that it was acknowledged before David Kyes, county judge; that the seal of the court is not attached, and that there is no certificate of magistracy as to David Kyes, county judge.

(By the COURT:) County judge where?

(Mr. CHIPERFIELD:) Of Tazewell county, 34 years ago.

(Mr. WALLACE:) The statute of the county judge gives him right to take acknowledgments. Here is a certificate of the clerk of the court that Kyes was at that time county judge.

(By the COURT:) The objection will be over-ruled; let it go in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said deed so introduced in evidence, is annexed hereto, marked Plaintiff's Exhibit 13, and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

109 This indenture made this eighth day of October in the year of our Lord one thousand eight hundred and sixty-seven, between Thomas B. Breedlove and Eliza Breedlove, his wife, of Tazewell county, State of Illinois, of the first part, and Benjamin S. Prettyman, of the second part, witnesseth:

That the said party of the first part for and in consideration of the sum of twenty four thousand ($2400-.00) dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold and by these presents do- grant, bargain and sell unto the said party of the second part, his heirs and assigns all the following described lot, piece or parcel of land situated in the county of Mason and State of Illinois, to-wit: The northeast quarter and the east half of the southeast quarter of section twenty-two (22); also the south half of section twenty three and all of section twenty-six (26) all in township twenty three (23) north of range six west of the third principal meridian containing twelve hundred acres more or less. This conveyance is made subject to a mortgage from said Thomas B. Breedlove and wife

to Tobias Bradley's estate, dated June 3, 1867, for the sum of $19617.25 with the accruing interest and the accrued interest thereon.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of the said party of the first part, either in law or equity of, in and to the above bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained
110 and described with the appurtenances unto the said party of the second part, his heirs and assigns forever, and the said T. B. Breedlove & Eliza Breedlove, party of the first part, hereby expressly waive, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns all right, title, claim, interest and benefit whatever in and to the above described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads. And the said Thomas B. Breedlove, party of the first part, for himself, his heirs, executors and administrators does covenant, grant, bargan and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law and in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his — and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof. The said party of the first part shall and will warrant and forever defend except as against said mortgage.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS B. BREEDLOVE. [SEAL.]
ELIZA BREEDLOVE. [SEAL.]

(Rev. stamp $24.00 cancelled.)

111 STATE OF ILLINOIS, } ss:
Tazewell County, }

I, David Kyes, county judge in and for said county, in the State aforesaid, do hereby certify that Thomas B. Breedlove and Eliza Breedlove personally known to me as the same persons whose names are subscribed to the annexed deed appeared before me this day in person and acknowledged that they signed, sealed and deliv-

ered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth, and the said Eliza Breedlove, wife of the said Thomas B. Breedlove, having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her and she also by me being informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the land and tenements therein mentioned and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal this 8th day of October A. D. 1867.

DAVID KYES, [SEAL.]
County Judge.

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court and *ex-officio* recorder of Mason county in the State aforesaid, and keeper of the records and files of said court and office do hereby certify the above and
112 foregoing to be a true, perfect and complete copy of a warranty deed filed for record October 31, 1867 and recorded in Book "Z" of Deeds at page 28 thereof, as the same appears from the records of said court and county now in my office remaining.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Havana in said county this 18th day of May, A. D. 1901.

[SEAL.] C. E. WALSH,
Circuit Clerk.

STATE OF ILLINOIS, } ss:
Tazewell County, }

I, Lot Bergstiesse, county clerk and clerk of the county court in and for said county, and keeper of the records and seal thereof do hereby certify that David *Keyes* whose name appears to be attached to the certificate of acknowledgment of the annexed certified copy of a deed from Thomas B. Breedlove and Eliza Breedlove his wife to Benjamin S. Prettyman, was on the 8th day of October A. D. 1867 county judge within and for said Tazewell county in the State of Illinois, duly commissioned and qualified as such, that full faith and credit are and of right ought to be given to all his official acts and that said certified copy of said deed is executed and acknowledged in conformity with the laws of the State of Illinois as they existed and were in favor on the said 8th day of October A.D. 1867.

Given under my hand and seal of said court at Pekin, Tazewell county, Illinois, this 21st day of May A. D. 1901.

[SEAL.] LOT BERGSTIESSE,
County Clk.

Pl't'ff's Ex. 13 5/24/1901 J. V. H.

113 (Mr. WALLACE:) Now the next thing we offer is a warranty deed from Benjamin S. Prettyman and Sarah A. Prettyman, his wife, to Absalom McCune, dated on the 13th day of August 1868, for the lands in controversy.

(Mr. CHIPERFIELD:) We object to the introduction of this deed on the ground it is incompetent, irrelevant and immaterial, and that there is no proper certificate of the official character of William M. Duffy, clerk of the circuit court of the county of Mason, and that the lands described in this deed are not connected with the lands described in the plaintiff's declaration.

(By the COURT:) Objection over-ruled.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said deed so introduced in evidence is annexed hereto, marked Plaintiff's Exhibit 14, and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

Revenue stamp $24.00.

This indenture, made this 13th day of August in the year of our Lord one thousand eight hundred and sixty-eight, between Benjamin S. Prettyman and Sarah A. Prettyman, his wife of the first part, and Absalom McCune of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-four thousand dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bragained and sold and by these presents do grant, bargain and sell unto the said party of the second part, his heirs and assigns, all the following described lots,

114 pieces or parcels of land, situated in — in the county of Mason, and State of Illinois, to-wit:

The north east quarter and north half of the east half of the south-east quarter of section twenty-two, the south half of section twenty-three and north half of the north half of *of* section twenty-six all in township twenty-three north of range six west of the third principal meridian, and containing six hundred acres by congressional survey together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of in or to the above bargained premises, with the hereditaments and appurtenances: to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, and the said Benjamin S. Prettyman and Sarah A. Prettyman his wife party of the first part, hereby expressly waive, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim, interest and benefit whatever, in and to the above described premises, and each and every

part thereof, which is given by or results from all the laws of this State pertaining to the exemption of homesteads.

And the said Benjamin S. Prettyman, party of the first part, for himself & his heirs, executors and administrators, does covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises
115 above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law and in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind and nature soever, and the above bargained premises in the quiet and peaceable possession of the party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In testimony whereof, the said party of the first part have hereunto set their hands and seals the day and year above written.

B. S. PRETTYMAN. [SEAL.]
S. A. PRETTYMAN. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Signed, sealed and delivered in presence of—
—— ——.

STATE OF ILLINOIS, } ss:
Tazewell County, }

I, Mark M. Bassett, a notary public, in and for said county in the State aforesaid, do hereby certify that Benjamin S. Prettyman and Sarah A. Prettyman, his wife, personally known to me as the same persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Sarah A. Prettyman, wife of the said Benjamin S. Prettyman, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the
116 said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this thirteenth day of August A. D. 1868.

[SEAL.] MARK M. BASSETT,
Notary Public.

STATE OF ILLINOIS, } ss:
Mason County, }

I, Wm. M. Duffy, clerk of the circuit court and *ex-officio* recorder of Mason county, in the State aforesaid, and keeper of the seal, records and files of said court and office, do hereby certify the above and foregoing to be a true, perfect and complete copy of a "warranty deed," filed for record August 15th A. D., 1868 at 6 o'clock p. m., and recorded in Book "A 2" of Deeds at page 218 thereof, as the same appear from the records of said court now in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Havana, this 5th day of July A. D. 1895.

[SEAL.] WM. M. DUFFY,
Clerk of the Circuit Court and ex-Officio Recorder in and for the County and State Aforesaid.

Pl'tiff's Ex. 14 5/24/1901 J. V. H.

117 (Mr. WALLACE:) The next thing we offer, your honor, is a warranty deed from Absalom McCune and Ruhoma, his wife, to Benjamin S. Prettyman, dated on the 30th day of November 1868.

(Mr. CHIPERFIELD:) We object to the admission of this deed on the ground that the same is incompetent, irrelevant and immaterial and that it is not connected with the lands described in the plaintiff's declaration, and for the reason that it is acknowledged before Bernard Bailey, and is not in proper form and is not properly certified.

(By the COURT:) Let it go in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said deed so introduced in evidence is annexed hereto, marked Plaintiff's Exhibit 15, and made part of this bill of exceptions, and is in words and figures as follows, to-wit:

Revenue stamp $1.00.

This indenture, made this thirtieth day of November in the year of our Lord one thousand eight hundred and sixty-eight, between Absalom McCune and Ruhoma McCune his — party of the first part, and Benjamin S. Prettyman, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand dollars, in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents do- grant, bargain and sell unto the said party of the second part, his heirs and assigns all the following described lots, pieces or parcels of land,

situated in —— in the county of Mason and State of Illinois,
118 to-wit: The north-east ¼ of section twenty-two (22) the north east (¼) of the south east ¼ of section (22) twenty-two, the south half of section twenty-three (23) and the north half of the north half of section twenty-six (26) in township twenty-three (23) north of range (6) six west of the third principal meridian:

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in or to the above bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part his heirs and assigns forever. And the said Absalom McCune & Ruhoma McCune his wife party of the first part, hereby expressly waives, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim interest and benefit whatever, in and to the above described premises, and each and every part thereof, which is given by or results from all the laws of this State pertaining to the exemption of homesteads.

And the said Absalom McCune party of the first part for his heirs, executors and administrators, does covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of a good,
sure, perfect, absolute and indefeasible estate of inheritance in
119 law and in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, leins, taxes, assessments and incumbrances, of what kind and nature soever, and the above bargained premises in the quiet and peaceable possession of the party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend. This is sold subject to all taxes due for 1868 thereon & also to a mortgage of $15,000.00 given by Absalom McCune to Lydia Bradley of Peoria, recorded in Mason county, Illinois.

In testimony whereof, the said party of the first part have hereunto set hands and seals the day and year above written.

ABSALOM McCUNE. [SEAL.]
RUHOMA McCUNE. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Signed, sealed and delivered in presence of
—— ——.

STATE OF ILLINOIS, } ss:
Peoria County, }

I, Bernard Baily, a notary public in and for said county, in the State aforesaid, do hereby certify that Absalom McCune and Ruhoma McCune, his wife, who are personally known to me as the same persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Ruhoma McCune wife of the said Absalom
120 McCune, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this second day of December A. D. 1868.

[SEAL.] BERNARD BAILY, *N. P.*

STATE OF ILLINOIS, } ss:
Mason County, }

I, Wm. M. Duffy, clerk of the circuit court and *ex officio* recorder of Mason county, in the State aforesaid, and keeper of the seal, records and files of said court and office, do hereby certify the above and foregoing to be a true, perfect and complete copy of a "warranty deed" filed for record December 7th A. D. 1868, at 11 o'clock a. m. and recorded in Book "A 2" of Deeds at page 403 thereof, as the same appear from the records of said court now in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Havana, this 5th day of July A. D. 1895.

[SEAL.] WM. M. DUFFY,
Clerk of the Circuit Court and ex-Officio Recorder in and for the County and State Aforesaid.

Pltff's Ex. 15 5/24/1901 J. V. H.

121 (Mr. WALLACE:) The next thing we offer is a quit-claim deed from Benjamin S. Prettyman to the plaintiff, H. W. Lightcap, dated the 4th day of September 1893. This is the original deed and the acknowledgment.

(Mr. CHIPERFIELD:) We object to it as incompetent, irrelevant and immaterial, and no proper foundation having been laid

(By the COURT:) It goes in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said deed so introduced in evidence, is annexed hereto, marked Plaintiff's Exhibit 16, and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

This indenture witnesseth, that the grantor, Benjamin S. Prettyman, of the city of Pekin, in the county of Tazewell, and State of Illinois, for the consideration of one thousand dollars *dollars*, conveys and quit-claims to H. W. Lightcap, of the — county of Peoria and State of Illinois, all interest in the following described real estate, to-wit:

The north east quarter of section twenty-two (22) and the north-east quarter of the south-east quarter of section twenty-two (22), and the south half of section twenty-three (23), and the north half of the north half of section twenty-six (26) all in township twenty-three north of range six (6) west of the third principal meridian, situated in the county of Mason, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of any homestead exemption laws of this State.

Dated this 4th day of September A. D. 1893.

B. S. PRETTYMAN. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

122 STATE OF ILLINOIS, }
Tazewell County, } ss:

I, James Haines, a notary public in and for the said county, in the State aforesaid, do hereby certify that B. S. Prettyman, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this 4th day of September, A. D. 1893.

[SEAL.] JAMES HAINES,
Notary Public.

No. 3083.

STATE OF ILLINOIS, }
Mason County, } ss:

This instrument was filed for record in the recorder's office of Mason county aforesaid, on the 30th day of Nov. A. D. 1894, at 10 o'clock a. m., and recorded in Book 61 of Q. C. D. on page 532.

WM. M. DUFFY, *Recorder.*

PLTF's EX. 16, 5/24/1901. J. V. H.

(Mr. WALLACE:) The next thing your honor we offer is a certified copy of a trust deed from Absalom McCune to E. G. Johnson trustee, dated on the 13th day of August 1868, for the land in controversy, to secure $15,000, as evidenced by five promissory notes payable to the order of Lydia Bradley.

(Mr. CHIPERFIELD:) Well we make the formal objection as incompetent, irrelevant and immaterial, and also as not properly certified copy.

123 (By the COURT): Let it go in.

To which ruling of the court counsel for defendant then and there excepted.

A copy of said trust deed, so introduced in evidence is annexed hereto, marked Plaintiff's Exhibit 17, and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

Trust Deed.

This indenture made this 13th day *day* of August A. D. 1868, by and between Absalom McCune, of the county of Mason and State of Illinois, party of the first part, and E. G. Johnson, of the county of Peoria and State of Illinois, party of the second part: Witnesseth, that said Absalom McCune is justly indebted to Lydia Bradley, of Peoria county, Illinois, in the sum of fifteen thousand dollars, secured to be paid by three certain promissory notes, each for the sum of five thousand dollars, and one payable in one year, one in two years and the other in three years from date, each note drawing 10 per cent. interest from date and signed by said Absalom McCune, and the interest payable an-ually Now therefore these presents witness that the said party of the first part in order to secure the prompt and punctual pay*able* of said note according to the tenor and effict thereof to the said Lydia Bradley or her assigns and on consideration of one dollar to him in hand paid by the said party of the second part the receipt whereof is hereby acknowledged do- hereby grant bargain sell, and convey unto the said party of the second part and to his heirs and assigns forever all the following described premises situate lying and being in the —— of —— county of Mason and State of Illinois, to wit: The north-east quarter and the north-east quarter of

124 south-east quarter of section twenty-two (22) the south half of section twenty-three (23) and the north half of the north half of section twenty-six (26) all in township twenty-three (23) north of range six (6) west of the 3rd principal meridian containing 600 acres according to the congressional surveys together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the above described premises unto the said party of the second part and to his heirs and assigns forever. In trust nevertheless for the following in trust in case default shall be made by the said party of the first part his heirs executors or administrators to pay the said

promissory note according to the tenor or affect thereof or the interest thereon at the time the same became due or to pay all the taxes and assessments ordinary or extraordinary which are now or may hereafter be assessed upon said property, or shall fail to keep the buildings on said premises constantly insured in some responsible insurance company to the amount of — for the benefit of the said — or the holder of said notes as further security therefor then on application of the said Lydia Bradley or the legal holder or holders of said notes having first given twenty days' notice by publishing the same in a public newspaper printed in the county where said premises are situated then it shall and may be lawful for the said part- of the second part his heirs assigns or attorney duly authorized to take possession of the premises aforesaid at his election and to sell the same or any part thereof at public sale at such time and place as the said party of the second part his heirs assigns or attorney may appoint or to adjourn said sale from time to time and upon making sale as aforesaid to make and deliver to the purchaser or purchasers thereof a good and
125 sufficient deed or deeds of conveyance in the law of the same in fee simple; and out of money arising from such sale after first paying all reasonable expenses growing out of the execution of the trust aforesaid and all taxes and assessments levied on the premises aforesaid or on such part thereof as may be sold for the purposes aforesaid to pay the said Lydia Bradley representatives executors or administrators or the legal holder or holders thereof the amount of said note above mentioned for principal or interest whether due or not due rendering the overplus of the proceeds of such sale (if any there should be) unto the said party of the first part or his heirs executors or administrators and in case no default is made in the payment of the aforesaid notes or the interest therein stipulated nor in the payment of the taxes or assessments levied upon said premises then this conveyance shall be null and void. In case the aforesaid note and all costs and reasonable expenses of the said trust shall be paid by the sale of part of the premises aforesaid, then the title to and the right of entery upon the unsold residue of the premises aforesaid shall vest absolutely in the party of the first part and the said unsold residue shall be fully discharged from all liens created by the trust aforesaid. And the said party of the first part for himself and his heirs and executors administrators do hereby covenant to and with the said party of the second part and his heirs and assigns and to and with the purchaser or purchasers at the sale aforesaid that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple and that the same are free from all incumbrances of what nature soever; and against all and every person or persons lawfully claiming or to claim the whole or any part
126 thereof will forever warrant and defend; and that he will during the continuance of these presents pay all taxes and assessments levied on the above described premises or any part

thereof before any advertisement or charges accrue against the said premises. And in case the said party of the first part should fail to pay any taxes or assessments levied on said premises before they are advertised for sale, or shall fail to keep said buildings insured as herein required then and in that case said party of the second part shall immediately sell said premises as herein before mentioned and apply the proceeds to the payment of said notes whether due or not due. And the said party of the first part hereby fully and absolutely waives and releases all right and claim which he may have in or to said mortgaged premises as a homestead exemption under and by virtue of the act of the General Assembly of the State of Illinois, entitled "An act to exempt homesteads from sale on executions," approved February 11th A. D. 1851; and the supplement thereto entitled "An act to amend an act to exempt homesteads from sale on executions" approved February 17th A. D. 1857, or any other law now existing or which may hereafter be passed in relation to the same subject this being given to secure the unpaid purchase money.

In witness whereof the said party of the first part have hereunto set his hand and seal that day and year first above written.

(Rev. stamp $15.00 cancelled)

ABSALOM McCUNE. [SEAL.]

STATE OF ILLINOIS, } ss:
Tazewell County, }

I, Mark M. Bassett, a notary public for the city of Pekin in said county do certify that on this day personally appeared be-
127 fore me Absalom McCune whose name appears subscribed to the foregoing deed of conveyance as having executed the same who is personally known to *be* to be the real person who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary act and deed for the uses and purposes therein expressed.

Given under my hand and seal of office at Pekin this 13th day of August A. D. 1868.

[SEAL.] MARK M. BASSETT,
Notary Public.

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court and *ex-officio* recorder of deeds in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of a trust deed recorded in volume "1" of mortgages at page 618 of the records of my office, on the 15th day of August 1868.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Havana, Ills., this 18" day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

Pl't'ff's Ex. 17 5/24/1901 J. V. H.
13—244

(Mr. WALLACE:) The next is a certified copy of the original bill in the circuit court of Mason county on the 22nd day of February 1872. It is a bill brought by Lydia Bradley Clark *vs.* Thomas B. Breedlove and others. In connection with that the separate answer of Benjamin S. Prettyman to said bill of complaint, in the same suit, filed in the circuit court March 14, 1872. The next thing is a motion on the part of the complainant, Lydia
128 Bradley Clark, who sets up she is sole beneficiary in the subject matter of the suit, and asking that her name be changed; that she had got a divorce from her husband, Edward Clark, and that her name had been changed back to Lydia Bradley, and ask- that she *he* allowed to prosecute the suit under the name of Lydia Bradley, together with the order of court granting the motion, motion and order of court filed on the 16th day of August 1873. Next is a præcipe for summons to Tazewell county, in the same suit, filed by E. G. Johnson, solicitor for oratrix, on August 16, 1873. The next is an affidavit of non-residence of Absalom McCune in that same suit, made by E. G. Johnson on the 13th day of August 1873, and filed in said cause of Lydia Bradley *vs.* B. S. Prettyman *et al.* August 16, 1873. The next is a certified copy of an amendment to the original bill, made by Lydia Bradley, filed in said court on October 25, 1877. The next is the answer of Ansel Haynes, Sarah J. Haynes and Sarah J. Prettyman to the original and amended bills of complaint in that same suit, filed at the November term 1877 of said court on the 6th day of November. The next is a decree of the circuit court of Mason county made in said proceeding of Lydia Bradley *vs.* Benjamin S. Prettyman and others, at the August term 1879, on the 22nd day of August, foreclosing the mortgage which I introduced from Absalom McCune to Johnson. The next is the report of the master in chancery of Mason county, made to the circuit court of Mason county at the November term 1879, filed in said court on the 29th day of November, and the order of the court approving the sale, showing that the lands in controversy were sold by him in pursuance to the decree of court, on the 27th day of October 1879, and that Lydia Bradley purchased the same subject to the equity of redemption.

129 Copies of said original bill, answer, motion and order of court, præcipe for summons, affidavit of non-residence, amendment to original bill, answer, decree, and report of master, are attached hereto, marked Exhibit 18, and made a part of this bill of exceptions, and are in words and figures as follows, to-wit:

Mason County Circuit Court, to the March Term, A. D. 1872.

LYDIA BRADLEY CLARKE vs. BENJAMIN S. PRETTYMAN, THOMAS B. Breedlove, Absalom McCane.	In Chancery, for Relief, and to Set Aside Conveyance, Reinstate Mortgage or Trust Deed, and for Foreclosure.

To the Hon. Charles Turner, judge of the twenty-first judicial circuit of the State of Illinois:

The complaint of your oratrix Lydia Bradley Clarke of the city and county of Peoria and State of Illinois, respectfully represents and states that on or about the fifth day of May A. D. 1867, her late husband, Tobias S. Bradley, late of Peoria county aforesaid deceased, at said Peoria intestate leaving no last will and testament and leaving no children issues of her said marriage with the said Tobias S. Bradley or otherwise; and that after his decease she was duly appointed sole administratrix of the goods, chattels, property and estate which belonged to the said Bradley at his decease, and she is still acting in that capacity.

Your oratrix further states that as such administratrix she has fully paid and satisfied all claims and demands proven or outstanding against said estate and that more than four years have
130 elapsed since she was appointed administratrix as aforesaid.

Your oratrix further states that she is informed and believes the law of the State of Illinois to be that she as the such widow of the said Bradley deceased, was and is entitled to and is the lawful owner in her own right of all the personal estate of the said Tobias S. Bradley deceased remaining unexpended after the payment of debts as aforesaid and that afterwards to-wit, after her said appointment as administratrix as aforesaid, on or about the thirty-first day of December A. D. 1869, she intermarried with one Edward E. Clark of the city of Memphis in the State of Tennessee and yet remains his wife, but that since her intermarriage she has continued to live and reside at the homestead in Peoria aforesaid, and that the said Clarke has hitherto continued to live and reside in the city of Memphis aforesaid.

Your oratrix further states unto your honor that on or about the third day of June A. D. 1867, one Thomas B. Breedlove then residing in the county of Mason, in the State of Illinois, was indebted to your oratrix, then Lydia Bradley in the sum of nineteen thousand six hundred and sixteen dollars and twenty-five cents as specified and shown in five promissory notes of that date signed by the said Breedlove and payable to the order of said Lydia Bradley with interest from date at ten per cent. payable annually at the First National Bank of Peoria in the State of Illinois, each note for the sum of thirty-nine hundred and twenty-three and 45/100 dollars and payable in one, two, three, four and five years respectively, and the said Breedlove being then the owner in fee of the following described

lands and real estate situated in the county of Mason aforesaid, viz: the north-east quarter of section twenty-two in township twenty-three north and range six west of the third principal meridian, also
131 the east half of the south-east quarter of the same section (22); also the south half of section twenty-three in the same township and range aforesaid; also the east half of section twenty-six and the southwest quarter of the same section in the same township and range above named; also the northwest quarter of section twenty-six above named of great value to-wit, of more than the amount of said indebtedness described in said notes—in order to secure the payment of all said indebtedness according to the tenor and effect of the notes above described together with his wife Eliza Breedlove, made, executed and delivered their deed of conveyance under their hands and seals and by them duly acknowledged, commonly called a trust deed and being in equity and law a mortgage—of the lands above herein described to one Elbridge G. Johnson, conditioned among other things for the payment of said described notes, which said — being acknowledged by the said Breedlove and wife was also duly recorded in the recorder's office of said Mason county, a copy of which said deed is hereto attached marked "A" and made part hereof, and your oratrix will ask leave on the trial of this cause to produce and offer in evidence a certified copy thereof together with a like copy of the certificates of acknowledgment and record if unable to find the original for that purpose and to produce the original if found.

And your oratrix further states unto your honor that afterwards and on or about the eighth day of October A. D. 1867, the said Thomas B. Breedlove and Eliza, his wife, by their other deed of that date under their hands and seals and by them duly acknowledged pretended to convey to one Benjamin S. Prettyman of the county of Tazewell and State of Illinois the said lands described as conveyed and mentioned in the trust deed to your
132 oratrix aforesaid in said deed to said Prettyman described as follows, viz: The east half of the southeast quarter of section twenty-two, the south half of section twenty-three and all of section twenty-six, all in township twenty-three north of range six west of the third principal meridian containing twelve hundred acres, more or less, which conveyance was made subject to the trust deed or mortgage above described and said conveyance recites a pretended consideration of twenty-four thousand dollars which your oratrix is informed and believes included the payment of the said incumbrance to your oratrix by the said Prettyman, the said Prettyman at the time assuming or agreeing to pay off the said incumbrance to your oratrix above described. A certified copy of said deed is hereto attached marked "B" and made part hereof for the purpose of showing the contents thereof and your oratrix will ask leave on the trial of this cause to refer to and use in evidence for the purpose aforesaid the said certified copy if deemed material, the original not being in the possession or control of your oratrix.

And your oratrix further states and shows unto your honor that

the said Benjamin S. Prettyman on the thirteenth day of August A. D. 1868 for purposes hereinafter mentioned made or pretended to make a sale and conveyance of part of said lands described in said Breedlove's deed to him for the pretended consideration or sum of twenty-four thousand dollars and to that end the said Prettyman and Sarah A., his wife, under their hands and seals, being dated on the day and year last above mentioned executed a deed which was by them acknowledged to one Absalom McCune, thereby conveying to him the northeast quarter of section twenty-two, the north half of the east half of the southeast quarter of the said section twenty-two, the south half of section
133 twenty-three, and the north half of the north half of section twenty-six, all in township twenty-three north of range six east of the third principal meridian part of lands above described as conveyed by said Breedlove to the said Prettyman and subject to the incumbrance or trust deed for the security of the debt to your oratrix aforesaid, a copy of which deed is hereto attached marked "C" and made part hereof for the purpose of stating and showing the contents of said conveyance and your oratrix will ask leave on the trial of this cause to refer to the said deed or a certified copy thereof if the original can not be obtained if deemed material by your orator and oratrix. And your orator and oratrix further state to your honor that the said deed purports to have been filed for record in the recorder's office of Mason county on the fifteenth day of August A. D. 1868 at six of the clock p. m. and to have been recorded in said office, and your orator and oratrix further show unto your honor that the said Absalom McCune on the same day and year aforesaid executed a mortgage, commonly called a sale mortgage, of the same premises so conveyed or pretended to be conveyed by said Prettyman to him to the said Prettyman conditioned for the payment to said Prettyman of the sum of eight thousand dollars specified in two notes of even date with the said mortgage payable to the order of the said Prettyman, one for the sum of three thousand dollars payable on the first day of June A. D. 1859 and the other of five thousand dollars payable on the thirteenth day of August A. D. 1872 with interest as specified in said notes, which mortgage deed purports to have been filed in the recorder's office of said Mason county on the fifteenth day of August A. D. 1868 at ten o'clock and forty minutes in the forenoon, a copy of which
134 mortgage deed and certificate of record and acknowledgment *are* hereto attached marked "D" and made part hereof for the purpose of stating and showing the contents thereof, and your orator and oratrix will ask leave on the trial of this cause to refer to the original or a certified copy thereof if the original can not be had if deemed material.

And your orator and oratrix further state and show unto your honor that on the same day of record, to-wit, on the thirteenth day of August A. D. 1868, the said Prettyman received from the said Absalom McCune another mortgage or trust deed that was drawn up or made by the said Prettyman, and is in his handwriting

wherever not in printed characters and purports to be and was to E. G. Johnson aforesaid in trust and conditioned for the payment to your oratrix, then Lydia Bradley of the sum of fifteen thousand dollars specified in three notes of five thousand dollars each of the same date aforesaid, payable to the order of Lydia Bradley in one, two and three years after date respectively with interest from date at ten per cent., signed by said Absalom McCune, which deed was duly acknowledged by said McCune and said deed was left by said Prettyman for record in the recorder's office of said Mason county on the said fifteenth day of August A. D. 1868, at ten o'clock and thirty-five minutes in the forenoon, a copy of which deed marked "D" and notes *are* hereto attached and made part of this bill for statement of contents, and your orator and oratrix will ask leave to refer to the same and offer them in evidence on the trial of this cause.

Your oratrix further states and shows unto your honor that after the making and delivery of last mentioned deed to said Prettyman, he the said Prettyman with purpose and intent to wrong,
135 cheat and defraud your oratrix out of her security upon the twelve hundred acres of land contained and described in the mortgage or trust deed from said Breedlove to the said Johnson for the security of your oratrix and to obtain from your oratrix the notes of Breedlove mentioned in said trust deed of said Breedlove to the said Johnson, said notes being then unpaid and still in the hands of your oratrix and the sum thereupon due including interest thereon amounting to about twenty thousand dollars, and being well and abundantly secured upon said twelve hundred acres of land, and fraudulently and craftily intending to obtain from your oratrix the said notes without payment of the same and thus release himself and the said Breedlove from his obligation and liability to pay the same and to release said twelve hundred acres of land or the best and most valuable part thereof from the burden of said security proposed to your oratrix and her agents to take and receive the said mortgage deed and notes of the said McCune for fifteen thousand dollars before described in lieu of the mortgage and notes of Breedlove upon the twelve hundred acres, and give up to him, the said Prettyman, the said Breedlove notes and release the said trust deed of said Breedlove to said Johnson, and that he, the said Prettyman would pay the balance then due upon said Breedlove notes, over and above the said fifteen thousand dollars; and with the intent to mislead, cheat and defraud your oratrix in the premises, the said Prettyman fraudulently and untruthfully and falsely represented and stated to your oratrix and her agents particularly to one Washington Cockle who was then the business agent of your oratrix and had in his charge and custody the said mortgage security
and notes of said Breedlove, that the six hundred and eighty
136 acres of land contained in and described in the deed from said McCune to said Johnson before mentioned were the most valuable part of the said twelve hundred acres or as valuable as any part thereof contained in said Breedlove's mortgage or trust deed, or

that said lands were in quality as good or better than the quality *as* the balance of said lands, that they were worth thirty thousand dollars and were good security and that they were valuable, improved and cultivated land, when in truth and fact the said lands described in said mortgage or trust deed of said McCune to said Johnson as trustee aforesaid were so selected by the said Prettyman from the twelve hundred acres as to include the poorest, least valuable and unimproved of said twelve hundred acres, leaving all the best, most valuable in quality and best located and best improved of the said twelve hundred acres contained in the Breedlove mortgage in the hands or possession of the said Prettyman, and the said lands so included in said McCune deed to said Johnson were wet, low, swampy, unimproved and comparatively valueless lands subject to overflow and unfit for agricultural purposes and not worth more than one-third to one-half the said mortgage debt in said deed described, and all this well known to said Prettyman.

And your oratrix further states and charges that the said Prettyman at the time of making said proposition and representation was well acquainted with the location, position, quality and value and character of said lands as well as the whole of the said twelve hundred acres, that he well knew said lands so contained in said McCune deed were wet, low, swampy lands, subject to overflow of water, unfit for agricultural purposes and not worth in the aggregate more than half the amount of the said sum of fifteen thousand dollars.

137 Your orator and oratrix further state and charge that neither your oratrix nor her agents had ever been upon or seen said lands nor were they acquainted with their qual-ity, relative location, quality, value or condition, and this the said Prettyman well knew.

And your oratrix further states that she, your oratrix and her agent the said Cockle, not knowing the quality, value, location, character or condition of said lands and relying in that respect solely upon the false, fraudulent, untruthful and fraudulent representations of the said Prettyman, and upon his further representations and statement at the time made that said McCune was a large stock farmer and was a man of property and good and responsible for the amount of said notes, and being deceived, misled and deluded by the said wrong, false, fraudulent, untruthful representations of the said Prettyman about the value of said lands and said Prettyman knowing it, were induced, persuaded to and did execute a release of the said Breedlove mortgage or trust deed aforesaid and did deliver up to said Prettyman the said Breedlove notes and did accept and receive the said McCune mortgage or trust deed and the notes therein described at their nominal or face value, to-wit, of fifteen thousand dollars, the said Prettyman paying to the agent of your oratrix the balance of the said Breedlove notes, to-wit, about the sum of five thousand dollars, and upon the further and within guarantee of said Prettyman that there was no other incumbrance upon the lands described in said McCune trust deed or mortgage previous to the incumbrance of the said deed. And your orator and oratrix

attach hereto and make part hereof for the purpose of stating its contents the said release of said Breedlove trust deed marked
138 "E" and will ask leave to refer to the original and the certificate of acknowledgment thereon on the trial of this cause if the same can be found. And in default of being able to produce the same your orator and oratrix will ask leave to offer and refer to a certified copy of the same from the recorder's office of said Mason county.

And your oratrix further show and charge that the said McCune never took possession or occupied or assumed to possess, occupy or control said farm, that he was and is now a citizen of the State of Illinois, was not a man of plentiful means, was not a farmer or stock farmer, and your oratrix believes the fact to be and so charges that the said McCune never in fact was or intended to become the lawful purchaser or owner of said premises so pretended to be sold and conveyed to him by the said Prettyman, that he was not possessed of sufficient or visible means from or of which said debt could be made or any part of it, and that he was in fact used by the said Prettyman as a stool pigeon, cat's paw or decoy duck or tool for the purpose of procuring the discharge aforesaid, and that after the discharge aforesaid and the delivery of the said Breedlove notes to said Prettyman, the said McCune on or about the thirtieth (30th) day of November A. D. 1868, together with his wife Rahoma McCune by their deed under their hands and seals of that date duly acknowledged and recorded, conveyed the said premises to the said Prettyman, or reconveying the said premises or lands contained in the said mortgage or trust deed of said McCune hereinbefore described as delivered by said Prettyman to your oratrix, a copy of which deed is hereunto attached and made part hereof marked "F" for statement of its contents, and your orator and oratrix will ask
139 leave to refer to and read a certified copy thereof in evidence on the trial of this cause if the original be not produced by the said Prettyman on said trial.

Your orator and oratrix further state and show that the said McCune since said deed has been absent from this State and in parts unknown to your orator and oratrix, and that he, the said McCune did not pay and has not paid the taxes legally assessed upon the land so conveyed to him by said Prettyman and the same has not been paid by said Prettyman and your oratrix has been compelled to pay the same to save said lands from being lost and will be compelled to pay other and further and larger sums for the same purpose and that the pretended sale by said Prettyman to said McCune has been cancelled and revoked by reconveyance by said parties and that the said twelve hundred acres of land contained and described in said trust deed of said Breedlove to the said Johnson for the security of the notes to your oratrix before described and the title thereof *is* now vested in the said Prettyman that he is the sole holder and owner thereof subject only to the said trust deed from the said McCune given for the security of the said fifteen thousand dollars mentioned therein, that altogether the said twelve hundred

acres is worth much more than the original debt of the said Breedlove to your oratrix and the interest thereon, and whatever sum the said Prettyman may have paid the said Breedlove for his conveyance aforesaid, if in fact the said Prettyman paid the said Breedlove any other consideration for said lands than the amount of the incumbrance and debt thereon due your oratrix as hereinbefore described, or if the said Prettyman in fact paid to said Breddlove the amount of the consideration stated in said deed from said
140 Breedlove to him inclusive of the sum due your oratrix and secured on the lands described in said trust deed of said Breedlove.

Your oratrix further states and show- unto your honor that they made repeated attempts to find said McCune and in default thereof and in default of payment by him of said indebtedness or the interest thereon described in said deed of said McCune to said Johnson to secure said notes due your oratrix as they fell due and in default of payment of ta-es upon said premises your oratrix caused said lands to be advertised to be sold according to the tenor and effect of power of said T. deed but before said sale being advised thereto your oratrix had the said lands visited and examined by the business agent of your oratrix which was the first time your oratrix or her agent or agents had ever been upon or seen said lands described in said McCune trust deed. When your oratrix found on such examination that the said lands were low, wet and swampy and of very little value, that such sale would not if made for the full value of said lands pay nearly the amount of the fifteen thousand dollars and the interest thereon together with the expenses of sale and taxes unpaid upon said lands that it was not advisable to proceed to sell the same, no recourse being possible upon said McCune who could not be found and who had no known property or means from which the balance of said debt could be made and your oratrix further show- and so charge- that the parcels of land so included in said mortgage or trust deed of said McCune to said Johnson had been so craftily and cunningly selected by said Prettyman from the said twelve hundred acres described in the said deed of said Breedlove to said Johnson for your oratrix before described
141 that they included all the poor, wet, swampy and inferior and worthless land of said twelve hundred acres and left retained by the said Prettyman all or nearly all that part of said twelve hundred acres which is really valuable for agricultural or farming purposes; and it then first became known unto your oratrix and her agents that your oratrix had been misled, cheated and defrauded in the premises and cheated and defrauded out of her just dues and securities by the fraudulent acts of said Prettyman, your oratrix therefore further states and charges that the said release of the said Breedlove mortgage was obtained by the said Prettyman by false, fraudulent, corrupt and dishonest statements, pretentions and representations as to the value and quality and security of the said lands included in said McCune trust deed, and as to the condition, responsibility and pecuniary ability of

the said McCune made by the said Prettyman to your oratrix and her agents that the said release was so obtained and the notes of said Breedlove promised to be given up to said Prettyman by said Prettyman solely for his advantage and benefit, and that he knowingly and intentionally misled and cheated your oratrix and her agents in the premises, that the debt of said Breedlove was well secured, that large arrears of interest have fallen due on the same and several of the notes described in the said Breedlove's deed are also unpaid and taxes unpaid upon the premises described in said deed, and that your oratrix has a right to have the whole balance of the debt now paid whether due or not due according to the original terms of the contract, and that the said release and discharge was, is and ought to be deemed and held null and void and of no effect and ought to be so decided and declared and cancelled and annulled, that the said Prettyman
142 ought to be ordered and compelled to return and restore to your oratrix the mortgage lien she had and held upon the twelve hundred acres of land described in said Breedlove deed to said Johnson for your oratrix and to the other notes in said deed described, subject however to the deductions of the amount paid by the said Prettyman upon the said indebtedness of said Breedlove, and that your oratrix ought in equity and good conscience to have a decree that the said release be cancelled, annulled and treated as never made, that the said Prettyman restore to your oratrix the said notes of said Breedlove so delivered to the said Prettyman, that the said mortgage or trust deed be declared in force and a valid lien upon the premises therein described until the full amount thereof due of principal and interest shall be paid by said Prettyman, that for non payment of interest and principal and taxes as provided in said trust deed the whole balance of said debt to be declared to be due for the foreclosure of the said Breedlove mortgage or trust deed and for the sale of the said twelve hundred acres of land therein described or so much thereof as will be sufficient to pay the balance of the said Breedlove debt and the interest thereon unless the said sum shall together with all cost be paid by the said Prettyman together with all the cost of this proceeding and all disbursements made by your oratrix for taxes upon said premises described in said McCune deed or which may hereafter be paid by your oratrix to save the said premises or any of them *prior* sale for taxes either past or in future until the said debt shall be paid in full, and that upon such payment being fully made either by sale or by payment by said Prettyman, your oratrix be ordered to deliver up or cancel the said mortgage or trust deed of the said Mc-
143 Cune and the notes there described. And your orator and oratrix

And hoped that said Prettyman having now the possession of the whole of said premises would *of* paid or would have offered to *of* paid said debt in full and thus restored your oratrix to her rights in the premises, but the said defendant Prettyman has ever neglected

and refused so to do but gives out in speeches and pretends that he is not liable or responsible to your oratrix and that she must follow the said McCune and that she your oratrix has no recourse upon him.

And your orator and oratrix being without remedy at law in the premises therefore prays that the said Benjamin S. Prettyman, Thomas B. Breedlove and Absalom McCune be made parties defendant to this suit and that they be summoned to appear and answer to the foregoing bill and all the matters and things, charged and allegations therein mentioned as fully and positively as if therein especially interrogated, but not upon their respective oaths, their oaths being waived to such answers that on a final hearing hereof an account be taken of the amount due upon the said Breedlove debt herein described including interest thereon and deducting the amount paid upon the same by the said Prettyman, also of all taxes paid or hereafter to be paid by your orator and oratrix up to the date of said — and that the said release be declared null and void and cancelled, that the said Prettyman be ordered to produce at said trial the said notes of the said Breedlove or account for their loss, that the contents thereof be proven; and that the said Prettyman be ordered to produce on said trial the original trust deed of said Breedlove herein described and the original release herein mentioned and the original deeds herein described from said
144 Prettyman and wife to said McCune and from said McCune and wife to said Prettyman, and that said mortgage or trust deed of said Breedlove to said Johnson for your oratrix herein described be declared and decreed a first lien and mortgage lien upon the said twelve (12) hundred acres of land therein described for the security of principal and interest thereupon due and for the taxes paid by your oratrix upon the lands or any part of them in said deed described, and that the whole be declared due and payable according to the tenor and effect of said deed, and that the usual decree be made for the sale of the said mortgaged premises and for the payment of the amount for principal and interest and taxes aforesaid and cost of this suit by some short day to be fixed by said court, and in default thereof that said premises or so much thereof as may be necessary for the purposes aforesaid be sold by the master in chancery of this court according to the practice of court of equity in such cases; and that the said defendants and each of them and that all persons claiming under them or either of them subsequent to the commencement of this suit and all other persons not parties to this suit who have any liens by judgment or decree upon the mortgaged premises subsequent to the said trust deed of the said Breedlove or any liens or claims thereon by or under any such subsequent decree or judgment, either purchasers, incumbrances, or otherwise may be barred and foreclosed of all equity of redemption in said premises, and that your orator and oratrix may have such other and further relief as the nature of the case may require and

as to this court shall seem agreeable to equity and good conscience as your complainant as in duty bound will ever pray.

LYDIA BRADLEY CLARKE,
By E. G. JOHNSON, *Her Solicitor.*

E. G. JOHNSON,
Solicitor for Complainants.

145 Clerk will please issue on the foregoing to Tazewell county, returnable to said term of said court.

E. G. JOHNSON, *Solicitor.*

Clerk will please cause publication as to McCune.

Mason County Circuit Court, March Term, 1872.

LYDIA BRADLEY CLARKE *vs.* BENJAMIN S. PRETTYMAN, THOMAS B. Breedlove, Absalom McCune.	In Chancery. For Foreclosure and Relief.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid any costs which may accrue in this action, either to the opposite party or any of the officers of this court, in pursuance of the laws of this State.

Dated this 19th day of Feb'y, A. D. 1872.

E. G. JOHNSON.

E. G. Johnson being duly sworn doth depose and say that he is informed and believes that the said Absalom McCune is not a resident or citizen of the State of Illinois.

E. G. JOHNSON.

Sworn to and subscribed before me this 19th day of Feb'y 1872.

[SEAL.] SEBASTIAN KRAUS, *N. P.*

"A."

This indenture made this third day of June A. D. 1867 by and between Thomas B. Breedlove and Eliza his wife of the county of Mason and State of Illinois, party of the first part and Elbridge G. Johnson of the county of Peoria and State of Illinois, party of
146 the second part; Witnesseth that the said Thomas B. Breedlove is justly indebted to Lydia Bradley in the sum of nineteen thousand six hundred and sixteen dollars and twenty-five cents specified in five promissory notes of even date herewith signed by the said Breedlove and payable to the order of Lydia Bradley with interest from date at ten per cent. payable annually at the First National Bank, Peoria, Illinois, each note for the sum of thirty-nine

hundred twenty-three & 45/100 dollars and payable in one, two, three, four and five years respectively. Now therefore, these presents witnesseth that the said party of the first part, in order to secure the prompt and punctual payment of said notes according to the tenor and effect thereof to the said Lydia Bradley or her assigns and in consideration of one dollar to us in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part and to her heirs and assigns forever all the following described premises situate lying and being in the county of Mason and State of Illinois, to-wit: The northeast quarter of section twenty-two (22) in township twenty-three (23) north and range six (6) west of the third principal meridian also the east half of the southeast quarter of the same section, also the south half of section twenty-three (23) in the same township and range, also the east half of section twenty-six (26) and the south-west quarter of the same section in the same township and range above named, also the northwest quarter of section twenty-six (26) above named; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the above described premises unto
147 the said party of the second part and to his heirs and assigns forever.

In trust nevertheless for the following purposes, to-wit: In trust in case default shall be made by the said part- of the first part, his heirs, executors or administrators to pay the said promissory notes accruing to the tenor and effect thereof or the interest thereon at the time the same become due or to pay all the taxes and assessments ordinary or extraordinary which are now or may hereafter be assessed upon said property; then on application of the said Lydia Bradley or the legal holder or holders of said notes, having first given sixty days' notice by publishing the same in a public newspaper printed in the county where said premises are situated, then it shall and may be lawful for the said party of the second part, his heirs, assigns or attorney duly authorized to take possession of the premises aforesaid at his election and to sell the same or any part thereof at public sale at such time and place as the said party of the second part, his heirs, assigns or attorney may appoint or to adjourn said sale from time to time and upon making sale as aforesaid to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee-simple and out of money arising from such sale after first paying all reasonable expenses growing out of the execution of the trust aforesaid and all taxes and assessments levied on the premises aforesaid or on such part thereof as may be sold for the purpose aforesaid to pay the said Lydia Bradley, her representatives, executors, or administrators or the legal holder or holders thereof the amount of said notes above mentioned for principal or interest whether due or not due,
148 rendering the overplus of the proceeds of such sale (if any there should be) unto the said party of the first part or his

heirs, executors or administrators and in case no default is made in the payment of the aforesaid notes or the interest thereon stipulated nor in the payment of the taxes or assessments levied upon said premises, then this conveyance shall be null and void. In case the aforesaid notes and all costs and reasonable expenses of the said trust shall be paid by the sale of part of the premises aforesaid, then the title to and the right of entry upon the unsold residue of the premises aforesaid shall vest absolutely in the party of the first part, and the unsold residue shall be fully discharged from all liens created by the trust aforesaid.

And the said party of the first part for himself and his heirs, executors and administrators do- hereby covenant to and with the said party of the second part and heirs and assigns and to and with the purchaser or purchasers at the sale aforesaid that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple and that the same are free from all incumbrances of what nature soever and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will forever warrant and defend and that he will during the continuance of these presents pay all taxes and assessments levied on the above described premises or any part thereof before any advertisement or charges accrue against the said premises. And in case the said party of the first part should fail to pay any taxes or assessments levied on said premises before they are advertised for
149 sale or shall fail to keep said buildings insured as herein required then and in that case said party of the second part shall immediately sell said premises as hereinbefore mentioned and apply the proceeds to the payment of said notes, whether due or not due.

And the said parties of the first part hereby fully and absolutely waive and release all right and claim which they may have in or to said mortgaged premises as a homestead exemption under and by virtue of the act of the General Assembly of the State of Illinois entitled "An act to exempt homestead- from sale on executions," approved February 11th A. D. 1851; and the supplement thereto entitled "An act to amend an act to exempt homesteads from sale on executions" approved February 17th, 1857, or under any other law now existing or which may hereafter be passed in relation to the same subject.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS B. BREEDLOVE. [SEAL.]
ELIZA BREEDLOVE. [SEAL.]

Rev. stamp, $20.50, cancelled.

STATE OF ILLINOIS, } ss:
Peoria County, }

Lewis Keyon, notary public for city of Peoria in said county do certify that on this day personally appeared before me Thomas B. Breedlove and Eliza his wife whose names appear subscribed to the foregoing deed of conveyance as having executed the same, who are personally known to me to be the real persons who and in whose names the acknowledgment is proposed to be made and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Eliza Breedlove,
150 wife of the said Thomas B. Breedlove having been by me made acquainted with the contents of said deed and by me examined separate and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned and all right of homestead exemption therein acknowledged that she had done so voluntarily and freely and without compulsion of her said husband and doth not wish to retract.

Given under my hand and seal of office at Peoria, this fourth day of June A. D. 1867.

LEWIS KEYON,
Notary Public.

[SEAL.]

STATE OF ILLINOIS, } ss:
Mason County, }

I, Geo. A. Blanchard, clerk of the circuit court in and for the county of Mason in the State aforesaid do hereby certify that the foregoing is a correct copy of a certain trust deed given by Thomas B. Breedlove and wife to E. G. Johnson as trustee for Lydia Bradley and conveying the N. E. ¼ sec. 22., T. 23 R. 6 & E. ½ S. E. ¼ same sec., also S. ½ sec. 23, also E. ½ sec. 26 and S. W. ¼ same sec., also N. W. ¼ 26 all in same town. and range. Said trust deed duly recorded in Book X of Deeds at page 441.

Given under my hand and seal of said circuit court at Havana, this 17th day of November A. D. 1869.

GEO. A. BLANCHARD,
Clerk Cir. Ct.

[SEAL.]

"B."

No. 11819½. Filed for record Oct. 31st, 1867.

151 Thomas B. Breedlove and wife } W. Deed.
to
B. S. Prettyman. }

This indenture made this eighth day of October in the year of our Lord, one thousand eight hundred and sixty-seven between Thomas B. Breedlove and Eliza Breedlove, his wife, of Tazewell county, State

of Illinois, of the first part and Benjamin S. Prettyman of the second part. Witnesseth, that the said party of the first part for and in consideration of the sum of twenty-four thousand dollars ($24,000) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold and by these presents do- grant, bargain and sell unto the said party of the second part his heirs and assigns all the following described lot, piece or parcel of land situated in the county of Mason and State of Illinois, to-wit: The north-east quarter and the east half of the south-east quarter of section twenty-two (22) also the south half of section twenty-three (23) and all of section twenty-six (26) all in township twenty-three (23) north of range six, west of the third principal meridian, containing twelve hundred acres more or less. This conveyance is made subject to a mortgage from said Thomas B. Breedlove and wife to Tobias Bradley's estate dated June 3rd, 1867, for the sum of $19,616.25 with the accruing interest and the accrued interest thereon together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part either in law or in equity of, in and to the above bargained premises with the hereditaments and appurtenances.

152 To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said T. B. Breedlove and Eliza Breedlove party of the first part hereby expressly waive, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns all right, title, claim, interest and benefit whatever in and to the above described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads, and the said Thomas B. Breedlove, party of the first part, for himself, his heirs, executors and administrators does covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law and in fee-simple and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former grants, bargains, sales, liens, taxes, assessments and encumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend except as against said mortgage.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS B. BREEDLOVE. [SEAL.]
ELIZA BREEDLOVE. [SEAL.]

(Revenue stamp $24.00 cancelled.)

153 STATE OF ILLINOIS, } ss:
Tazewell County, }

I, David Keys, county — in and for said county in the State aforesaid do hereby certify that Thomas B. Breedlove and Eliza Breedlove personally known to me to be the same persons whose names are subscribed to the annexed deed appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth. And the said Eliza Breedlove, wife of the said Thomas B. Breedlove, having been by me examined separate and apart and out of hearing of her said husband and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being informed of her rights under the homestead laws of this State acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal this 8th day of October A. D. 1867.

DAVID KEYS, [SEAL.]
County Judge.

STATE OF ILLINOIS, } ss:
Mason County, }

I, George A. Blanchard, clerk of the circuit court and *ex-officio* recorder in and for said county and State aforesaid, certify the above and foregoing to be a true and complete copy (as the same purports to be) of the original conveyance as the same appears of rec-
154 ord in my said office particular reference being had to Book "Z" of Deeds, pages 28, 29 & 30.

Witness George A. Blanchard clerk and the seal of said court at Havana in said county this 14th day of July A. D. 1870.

[SEAL.] GEO. A. BLANCHARD, *Clerk,*
By RALPH COCHRANE, *D'p'ty.*

"C."

No. 133114. Filed for record Aug. 15, 1868, at 6 o'clock p. m.

This indenture made this 13th day of August in the year of our Lord one thousand eight hundred and sixty-eight between Benjamin S. Prettyman and Sarah A. Prettyman, his wife, of the first part, and Absalom McCune of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-four thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain and sell unto the said party of the second part, his heirs and assigns, all the following described lots, pieces or parcels of land situate in *in* the county of Mason and State of Illinois, to-wit:

The northeast quarter and the north half of the east half of the south-east quarter of section twenty-two, the south half of section twenty-three and north half of the north half of section twenty-six, all in township twenty-three north of range six west of the third principal meridian and containing six hundred acres by congressional survey.

(Revenue stamp $24.00)

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents,
155 issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Benjamin S. Prettyman and Sarah A. Prettyman, his wife, party of the first part, hereby expressly waive, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim, interest and benefit whatever, in and to the above described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads. And the said Benjamin S. Prettyman, party of the first part for himself and his heirs, executors and administrators, do- covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law in fee-simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and in-

cumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any
156 part thereof, the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

B. S. PRETTYMAN. [SEAL.]
S. A. PRETTYMAN. [SEAL.]

STATE OF ILLINOIS, } ss:
Tazewell County, }

I, Mark M. Bassett, a notary public in and for said county, in the State aforesaid, do hereby certify that Benjamin S. Prettyman and Sarah Prettyman, his wife, personally known to me to be the same persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Sarah A. Prettyman, wife of the said Benjamin S. Prettyman, having been by me examined separate and apart and out of hearing of her said husband, and the contents and meaning of the said instrument in writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this thirteenth day of August A. D. 1868.

[SEAL.] MARK M. BASSETT,
Notary Public.

157 STATE OF ILLINOIS, } ss:
Mason County, }

I, George A. Blanchard, clerk of the circuit court and *ex-officio* recorder within and for said county, State aforesaid, certify the above and foregoing to be a true, perfect and complete copy of the original conveyance of which the same purports to be a copy as the same appears of record in my office particular reference being had to page No. 218, Book A 2 of said Mason County records.

Witness George A. Blanchard clerk, and the seal of said court at Havana this 14th July A. D. 1870.

[SEAL.] GEORGE A. BLANCHARD, *Clerk,*
By RALPH COCHRANE, *D'p'ty.*

"D."

No. 183299. Filed for record Aug. 15, A. D. 1868, at 10 o'clock a. m.

This indenture made this 13th day of August, in the year of our Lord, one thousand eight hundred and sixty-eight, between Absalom McCune of the first part and Benjamin S. Prettyman of the second part.

Whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of eight thousand dollars secured to be paid by a certain two promissory notes bearing even date herewith payable to said B. S. Prettyman, one payable June 1st, 1869 for $3000.00 *dollars*, the other payable August 13th 1872, for $5000.00 and both drawing 10 per cent. interest and interest to be paid annually.

Now therefore, this indenture witnesseth that the said party of the first part, for the better securing the payment of the money
158 aforesaid, with interest thereon according to the tenor and effect of the said two promissory notes above mentioned; and also in consideration of the further sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, aliened and conveyed and by these presents do- grant, bargain, sell, remise, alien and convey unto the said party of the second part, his heirs and assigns forever, all the following described lots, pieces or parcels of land situate in the county of Mason, State of Illinois, to-wit:

(Rev. stamps, $8.00.)

The northeast quarter and the north-east quarter of the southeast quarter of section twenty-two, and the south half of section twenty-three, and the north half of the north half of section twenty-six, all in township twenty-three, north of range six, west of the third principal meridian, containing 600 acres by congressional survey.

Together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining, with the rents, issues and profits thereof, and all the estate, interest and claim whatsoever of the said party of the first part, in law as well as in equity in and to the premises hereby conveyed. To have and to hold the same with the appurtenances unto the said party of the second part, his heirs, executors, administrators and assigns, and to their only proper use, benefit and behoof. Provided always, and these presents are upon this express condition that the said party of the first part, his heirs, executors, administrators or assigns shall well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above mentioned promissory
159 notes according to the true intent and meaning thereof, then these presents and everything herein expressed shall be ab-

solutely null and void. But in case of default in the payment of the said note above mentioned, or any part thereof, according to the tenor and effect thereof, the said party of the second part, his legal representatives or attorney, after having advertised such sale 20 days in a newspaper published in Pekin, Illinois, or by posting up printed or written notices in four places in the county where said premises are situate, may sell the said premises or any part thereof, and all right and equity of redemption of the said party of the first part, his heirs, executors, administrators or assigns therein at public vendue, to the highest bidder for cash, at Pekin, at the time appointed in such advertisement, or may adjourn the sale from time to time at discretion; and upon the making of such sale or sales as the attorney of the said party of the first part for such purposes hereby constituted, irrevocable, or in the name of the said party of the second part, or his legal representatives, shall execute and deliver to the purchaser deeds for the conveyance in fee of the premises sold, and shall apply the proceeds of sale to the payment of (1) expenses of advertising, selling and conveying as aforesaid; including attorney's fees, and (2) the amount due on said note, (3) rendering the overplus, if any, to the said party of the first part, or his assigns, at the office of the said party of the second part, in Pekin, Illinois.

And the said Absalom McCune, party of the first part, hereby expressly waives, releases and relinquishes unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim, interest and benefit whatever in and to the
160 above described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Absalom McCune, party of the first part, covenants with the said party of the second part, and his heirs, executors, administrators or assigns that he is well seized in fee of the said premises, and has good right to convey the same as aforesaid; and that they are free from all incumbrance and that — will forever warrant and defend the same against all lawful claims, it being to secure purchase money.

In witness whereof the said party of the first part hereunto set his hand and seal the day and year above written.

ABSALOM McCUNE. [SEAL.]

STATE OF ILLINOIS, } ss:
Tazewell County, }

I, Mark M. Bassett, a notary public in and for said county in the State aforesaid, do hereby certify that Absalom McCune personally known to me to be the same person whose name is subscribed to the above mortgage, appeared before me this day in person and acknowledged that he executed and delivered the said mortgage as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of August

in the year of our Lord one thousand eight hundred and sixty-eight.

[N. P. SEAL.] MARK M. BASSETT, *N. P.*

STATE OF ILLINOIS, } ss:
Mason County, }

I, George A. Blanchard, clerk of the circuit court and *ex-officio* recorder in and for said county, State aforesaid, certify the above and foregoing to be a full, perfect and complete copy of the
161 original sale mortgage of which the same purports to be a copy, as the same appears of record in my said office, special reference being had to page 35 of Book "J" of said Mason County records.

Witness George A. Blanchard clerk, and the seal of said court at Havana in said county this 14th day of July A. D. 1870.

[SEAL.] GEO. A. BLANCHARD, *Clerk,*
By RALPH COCHRANE, *D'p'ty.*

"E."

This indenture made this 13th day of August A. D. 1868 by and between Absalom McCune, of the county of Mason and State of Illinois, part- of the (1st) part and E. G. Johnson of the county of Peoria and State of Illinois party of the second part;

Witnesseth, that the said Absalom McCune is justly indebted to Lydia Bradley of Peoria county, Illinois, in the sum of fifteen thousand dollars, secured to be paid by three certain promissory notes, each for the sum of five thousand dollars, and one payable in one year, one in two years and the other in three years from date, each note drawing 10 per cent. interest from date and signed by said Absalom McCune and the interest payable annually. Now therefore these presents witnesseth that the said party of the first part in order to secure the prompt and punctual payment of said notes according to the tenor and effect thereof to the said Lydia Bradley or her assigns, and in consideration of one dollar to him in hand *apid* by the said party of the second —, the receipt whereof is hereby acknowledged do hereby grant, bargain and sell and convey unto the said party of the second part and to his heirs and assigns forever all the following described premises situate, lying and being in the *of* county of Mason and State of Illinois, to-wit: The
162 northeast quarter and the northeast quarter of the southeast quarter of section twenty-two (22), the south half of section twenty-three (23) and the north half of the north half of section twenty-six (26) all in township twenty-three (23) north of range six (6) west of the 3rd principal meridian, containing 600 acres according to the congressional survey. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the above described premises unto the said party of the second part and to his heirs and assigns forever in trust nevertheless for the following purposes, to-wit: In trust in case default shall be made by the said party of the first part, his heirs, executors or administrators to pay the said promissory notes according to the tenor and effect thereof or the interest thereon at the time the same became due or to pay all the taxes and assessments ordinary or extraordinary which now or may hereafter be assessed upon said property or shall fail to keep the buildings on said premises constantly insured in some responsible insurance company to the amount of — for the benefit of the said — or the holder of said notes as further security therefore then on application of the said Lydia Bradley or the legal holder or holders of said notes having first given twenty days' notice by publishing the same in a public newspaper printed in the county where said premises are situated, then it shall and may be lawful for the said party of the second part, his heirs, assigns or attorney duly authorized to take possession of the said premises aforesaid at his election and to sell the same or any part thereof at public sale at such time and place as the said party of the second part, his heirs, assigns or attorney may appoint or to adjourn said sale from time to time
163 and upon making sale as aforesaid to make and deliver up to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee-simple and out of money arising from such sale after first paying all reasonable expenses growing out of the execution of the trust aforesaid and all taxes and assessments levied on the premises aforesaid or on such part thereof as may be sold for the purposes aforesaid to pay the said Lydia Bradley's representatives, executors or administrators or the legal holder or holders thereof the amount of said notes above mentioned for principal or interest whether due or not due, rendering the overplus of the proceeds of such sale (if any there should be) unto the said party of the first part or his heirs, executors or administrators, and in case no default is made in the payment of the aforesaid notes or the interest therein stipulated nor in the payment of the taxes or assessments levied upon said premises, then this conveyance shall be null and void in case the aforesaid notes and all, costs and reasonable expenses of the said trust shall be paid by the sale of part of the premises aforesaid, then the title to and the right of entry upon the unsold residue of the premises aforesaid shall vest absolutely in the party of the first part and the said unsold residue shall be fully discharged from all liens created by the trust aforesaid. And the said party of the first part for himself and his heirs assigns and to and with the purchaser or purchasers at the sale aforesaid that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple and that the same are free from all incumbrances of what nature soever and against all and every per-

son *pr* persons lawfully claiming or to claim the whole or any
164 part thereof will forever warrant and defend and that he will during the continuance of these presents pay all taxes and assessments levied on the above described premises or any part thereof before any advertisement or charges accrue against the said premises, and in case the said party of the first part should fail to pay taxes or assessments levied on said premises before they are advertised for sale or shall fail to keep said buildings insured as herein required, then and in that case said party of the second part shall immediately sell said premises as hereinbefore mentioned and apply the proceeds to the payment of said notes whether due or not due. And the said party of the first part hereby fully and absolutely waives and releases all right and claim which he may have in or to said mortgaged premises as a homestead exemption under and in and by virtue of the act of the General Assembly of the State of Illinois entitled an act to exempt homesteads from sale on executions approved February 11th A. D. 1851 and the supplement thereto entitled an act to amend an act to exempt homesteads from sale on executions approved February 17th, 1857, or under any other law now existing or which may hereafter be passed in relation to the same subject, this being given to secure the unpaid purchase money.

In witness whereof the said party of the first part *have* hereunto set his hand and seal the day and year first above written.

ABSALOM McCUNE. [SEAL.]

STATE OF ILLINOIS, } ss:
Tazewell County, }

I, Mark M. Bassett, a notary public for the city of Pekin in
165 said county do certify that on this day personally appeared before me Absalom McCune, whose name appears subscribed to the foregoing deed of conveyance as having executed the same, who is personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary act and deed for the uses and purposes therein expressed.

Given under my hand and seal of office at Pekin this 13th day of August A. D. 1868.

MARK M. BASSETT, *N. P.*

$5,000.00. AUGUST 13TH, 1868.

One year after date I promise to pay to the order of Lydia Bradley at the First National Bank of Peoria, Illinois, five
No stamp thousand dollars with interest at 10 per cent. from
mortgage. date. Value rec'd.

ABSALOM McCUNE,
Pekin, Ills.

$5,000.00. AUGUST 13TH, 1868.

Two years after date I promise to pay to the order of Lydia Bradley at the First National Bank of Peoria, Illinois, five thousand dollars with interest at 10 per cent. from date. Value rec'd.

No stamp mortgage.

ABSALOM McCUNE,
Pekin, Ill.

$5,000.00. AUGUST 13TH, 1868.

Three years after date I promise to pay to the order of Lydia Bradley at the First National Bank of Peoria, Illinois, five thousand dollars with interest at 10 per cent. from date. Value rec'd.

No stamp mortgage.

ABSALOM McCUNE,
Pekin, Illinois.

166 "F."

No. 2. Filed for record Dec. 7, 1868, at 11 o'clock a. m.

This indenture made this thirteenth day of November in the year of our Lord one thousand eight hundred and sixty-eight between Absalom McCune and Ruhoma McCune, his wife, party of the first part and Benjamin S. Prettyman party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and by these presents do grant, bargain, and sell unto the said party of the second part, his heirs and assigns, all the following described lots, pieces or parcels of land situate in the county of Mason and State of Illinois, to-wit:

The northeast ¼ of section twenty-two (22), the northeast ¼ of the southeast ¼ of section twenty-two (22), the south half of section twenty-three (23) and the north half of the north half of section twenty-six (26) in township twenty-three (23) north of range six (6) west of the third principal meridian.

(Revenue stamp $1.00.)

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

167 To have and to hold the premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And that said Absalom McCune and Ruhoma McCune, his wife, party of the first part, hereby expressly waives, relinquishes and re-

leases unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim, interest and benefit whatever, in and to the above described premises, and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads. And the said Absalom McCune party of the first part for his heirs, executors and administrators does covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law in fee simple and has good right, full power and authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs, and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend. This is sold subject to all taxes due for 1868 thereon and also to a mortgage of $15000, given by Absalom McCune to Lydia Bradley of Peoria, recorded in Mason county, Illinois.

168 In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ABSALOM McCUNE. [SEAL.]
RUHOMA McCUNE. [SEAL.]

STATE OF ILLINOIS, } ss.:
Peoria County, }

Bernard Bailey, a notary public in and for said county in the State aforesaid, do hereby certify that Absalom McCune and Ruhoma McCune his wife who are personally known to me to be the same persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Ruhoma McCune, wife of the said Absalom McCune, having been by me examined separate and apart and out of hearing of her said husband, and the contents and meaning of the said instrument in writing having been by me fully made known and explained to her and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein described, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this second day of December A. D. 1868.

[SEAL.] BERNARD BAILEY, *N. P.*

169 STATE OF ILLINOIS, } ss:
Mason County, }

I, George A. Blanchard, clerk of the circuit court and *ex-officio* recorder in and for said county, State aforesaid, certify the above and foregoing to be a true, perfect and complete copy of the original conveyance of which the same purports to be a copy, as the same appears of record in my said office, particular reference being had to page 403 Deed Record A 2 of said Mason county records.

Witness George A. Blanchard clerk, and the seal of said court at Havana in said county this 14th July A. D. 1870.

[SEAL.] GEORGE A. BLANCHARD, *Clerk,*
By RALPH COCHRANE, *D'p'ty.*

"G."

Know all men by these presents that we, Lydia Bradley and Ellbridge G. Johnson of the county of Peoria and State of Illinois, for and in consideration of one dollar and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quit-claim unto Benjamin S. Prettyman of the city of Pekin of the county of Tazewell and State of Illinois, all the right, title, interest or claim whatsoever I may have acquired in, through or by a certain trust deed bearing date the third day of June A. D. 1867, and recorded in the recorder's office of Mason county, Illinois, in Book "J" page 443 to the premises therein described. The north-east quarter and the east half of the southeast quarter of section twenty-two (22), the south half of section twenty-three (23) and section *twenty* twenty-six (26) in township twenty-three north of the base line and range six west
170 of the third principal meridian in Mason county, Illinois.

Witness our hands and seals this 28th day of August A. D. 1868.

LYDIA BRADLEY. [SEAL.]
F. G. JOHNSON. [SEAL.]

STATE OF ILLINOIS, } ss:
Peoria City & County, }

I, Wm. E. Stone, a duly commissioned notary public in and for the said city in said county and State aforesaid, do hereby certify that Lydia Bradley and Ellbridge G. Johnson, personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of

writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-ninth day of August A. D. 1868.

[SEAL.] WM. E. STONE,
Notary Public.

STATE OF ILLINOIS, } ss:
Mason County, }

I, George A. Blanchard, clerk of the circuit court of the county of Mason and State of Illinois, do hereby certify that the foregoing is a correct copy of release deed from Lydia Bradley and E. G. Johnson to Benjamin S. Prettyman, recorded in Book "I" of Mortgages at page 629.

Given under my hand and seal of said court at Havana, this 17th day of November, 1869.

[SEAL.] GEO. A. BLANCHARD,
Clerk Cir. Ct.

171 (On back of said bill appears the following indorsement.) Lydia Bradley Clarke *vs.* Benjamin S. Prettyman, Thomas B. Breedlove, Absalom McCune. In chancery, for foreclosure and relief. Filed Feb'u'ry 22, 1872. Geo. A. Blanchard, cl'k. E. G. Johnson, solicitor.

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of the original bill filed in said court on the 22nd day of February 1872 in the suit lately pending in said court on the chancery side thereof wherein Lydia Bradley Clark was complainant and Benjamin S. Prettyman and others were defendants as the same appears from the records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Mason, }

Of the March Term, 1872, of the Circuit Court of said County.

LYDIA BRADLEY
vs.
BENJAMIN S. PRETTYMAN, THOMAS B. Breedlove, & Absalom McCune. } In Chancery to Foreclose.

172 *The Separate Answer of the said Benjamin S. Prettyman, One of the Above-named Defendants.*

Saving and reserving &c., for answer to said bill of complaint in said cause above named filed & to so much thereof as he is informed that it is necessary & proper for him to make answer unto severally answering says—He admits that said Tobias S. Bradley died as alleged without children, and that said complainant was appointed administratrix as alleged in said bill, but respondent knows nothing of the payment of the debts of the estate of Bradley, and therefore denies the same is true & respondent admits that by law said complainant is entitled to the personal estate of said Tobias S. Bradley. Respondent admits the marriage of complainant as alleged, but knows not of the residence alleged, & therefore denies the same and calls for proof. This respondent admits that said Thomas B. Breedlove on the 3rd day of June, 1867, was indebted to said Lydia Bradley $19616.25/100 dollars as shown in said alleged notes of that date payable to Lydia Bradley with interest at 10 per cent. & payable as alleged. And this respondent admits that said Breedlove owned & executed the trust deed or mortgage on the lands in said bill alleged to secure the payment of said notes and sum of $19616.25.

And the respondent admits that said Breedlove & wife on the 8th day of October 1867, sold and conveyed the said lands in said mortgage and bill described to this respondent and that said deed was made to this respondent subject to said mortgage to said Johnson, and this respondent avers that said consideration was $24000.00 named in said deed was not pretended but real, and this respondent denies that he ever agreed to pay off said incumbrance to complainant or otherwise.

173 This respondent admits that on the 12th day of August 1868, he sold and conveyed the part of said lands alleged in said bill & described in his deed to Absalom McCune to said Absalom McCune for the sum alleged & that the same was acknowledged and recorded as alleged in said bill, but he denies it was for the purpose or with the intention in said bill alleged, or made subject to any incumbrance or trust deed to, or any debt to complainant, and this respondent admits that said Absalom McCune on the 12th day of August, 1868, executed to this respondent for said sum of $8000.00 *dollars*, a sale mortgage on said land named in said deed

to him & that said mortgage was filed for record as alleged, & respondent admits that on the 13th day of August 1868, said McCune executed his trust deed or sale mortgage to said E. G. Johnson to secure the sum of $15000.00 *dollars* to said complainant Lydia Bradley in notes described in said bill, and respondent admits that the same — acknowledged and was recorded at the time alleged.

But this respondent denies that he, after the making of said deed or mortgage named or at any time with any intent to cheat or defraud complainant out of any security or otherwise or to obtain the notes of the said Breedlove unfairly or unlawfully of fraudulently or craftily or otherwise improperly from said complainant or otherwise or to improperly or wrongfully to release said Breedlove or this respondent from any agreement or obligation whatever or wrongfully release all or any part of said land from said mortgage of said Breedlove proposed to complainant or her agents to take the notes of McCune for $15000.00 *dollars of* lieu of the said notes & mortgage of said Breedlove & get said release deed named, although this respondent avers that he did
174 before the making of said mortgage from said McCune to said Johnson for the $15000.00 *dollars* named call on the agents of complainants Washington Cockle & the said trustee E. G. Johnson to inquire whether they or complainant would accept the notes and mortgage of said McCune on 600 acres of the land in the Breedlove trust deed or mortgage to said Johnson named in lieu of so much of the debt of said Breedlove to said complainant inasmuch as the same was to become due faster & earlier than the Breedlove debt, said notes of McCune becoming due in one, two & three years from August 13th, 1868, and the said Breedlove debt not being due until 1, 2, 3, 4, & 5 years from June 30, 1867, and this respondent was then informed by said Johnson that the whole matter was left by complainant with said Cockle by him to be determined for her as he thought best under the circumstances and this respondent avers that he then called on said Cockle, who informed this respondent, that if this respondent would pay him for said complainant the residue of the debt of Thomas B. Breedlove to complainant over & above said $15000.00 *dollars*, he would take the said notes and mortgage of said McCune on said 600 acres of said land in lieu of that sum of $15000.00 *dollars* of the Breedlove debt & have the mortgage or trust deed on all the 1200 acre tract released and satisfied & this respondent avers that he then agreed to & with the said Cockle for and on behalf of complainant to pay in cash the residue of the Breedlove debt and have the said McCune execute his notes & mortgage to said complainant or for her use on said 600 acres of land & then & there paid to said Cockle in cash the residue of said T. B. Breedlove debt over said $15000.00 *dollars* and by his, said Cockle's direction took said notes & mortgage of McCune to the office of said E. G.
175 Johnson who then & there in the presence of this respondent carefully examined the same and the receipt from said Cockle for the residue of said debt of Breedlove, paid in cash by this re-

spondent (being as this respondent now recollects over $7000.00 *dollars* in cash) and he, the said Johnson then remarked that he, Johnson would not have agreed to exchange said security & satisfy said trust deed of Breedlove, but as complainant & Cockle had chosen to do so, he would, as directed by them, receive the notes and mortgage of McCune for complainant & release the Breedlove deed of trust on all of the lands therein, conditioned that this respondent would guarantee *that* the title to said 600 acres in the mortgage of McCune to be free from any prior liens or incumbrances thereon & respondent avers that he then and there so guaranteed the same & delivered said notes and mortgage of said McCune to said Johnson for complainant & at the request of the said Johnson & for complainant caused the said mortgage of McCune to said Johnson for said 600 acres of land to be filed for record at the time in said bill alleged & he avers that there was then no prior or other lien on said land so mortgaged by said McCune & this respondent avers that the said Johnson notwithstanding said guarantee aforesaid would not & did not then execute said release, but said he would have said complainant herself sign the same with him, as she was a woman & with all very carefull & particular & personally looked over all her own business. And respondent avers that said release named in said bill was of was afterwards & to-wit and long after the date of said release in said bill named sent & delivered to your respondent signed & acknowledged as set forth in said bill and long after the said complainant & all of her agents had had full
176 opportunity to examine said land, inquire into the character & standing of said McCune & in fact long after they had to some extent inquired of & become satisfied as to both and this respondent denies all intent or purpose to mislead, cheat, wrong or defraud complainant or any other person in said transaction and this respondent denies all fraudulent, untruthful and false statements imputed to him in said bill and respondent denies that he represented *that* said 600 acres of land to be the most valuable part thereof, but thinks now it is of equal value with the residue thereof, and respondent denies that he informed any person that the same was cultivated land, although he avers that in fact part of the same was then & now is in cultivation & much more might then have been cultivated & all of the rest might now be put in cultivation & respondent denies that said 600 acres so mortgaged by McCune was the poorest & least valuable of the 1200 acres & respondent denies that said land- mortgaged by said McCune were subject to overflow or unfit for agricultural purposes or not worth more than ⅓ to ½ of said mortgage debt named or that all of it was ever wet or low or swampy or was so known by Prettyman & this respondent denies any further or other knowledge of the land or any part of it than was presumed to be & might have been known to said complainant & her agents & which the said Cockle averred that he did know the quality & value of the same when respondent paid him the cash above named.

And respondent denies that complainant relied on anything he

said in arranging said Breedlove debt, but required written guarantees from him for everything doubtful & delayed the execution of every paper until time could be had to inform herself or for some similar purpose, this respondent denies that
177 he represented said McCune to be a large stock farmer, but avers that he said that McCune claimed that he was buying the tract for a stock farm & that he represented that he then had a drove of Texas cattle coming from the South-west & which he expected to drive to & herd the same upon said land & had the appearance of being a fair business man; but he denies that he deceived, misled or deluded said complainant or her agents or that he was or is capable of doing so & avers that said Cockle is & was then the president or some importance officer in the First National Bank of Peoria & said Johnson is one of the most able lawyers in Illinois & said complainant has the reputation of being the most capable & efficient woman of business in the State of Illinois, and he positively denies that he ever persuaded or otherwise than in a just & fair business manner induced any of them to sign the release or consent that it should be done.

Respondent admits he took up the Breedlove notes, but avers he paid for them before they became due as aforesaid & that alone induced complainant & and her agents to take the money & the McCune notes & mortgage & give him the others. Respondent also admits that complainant accepted said McCune notes & mortgage & avers it was with full knowledge & when she had held them from the 13th to the 28th of August to examine, enquire & determine upon & about. Respondent denies that said McCune ever occupied or assumed to possess or occupy or control said farm, avers that he did employ persons to fence, break, erect a dwelling, cut hay & drain thereon for him & until his arrival with his cattle & procured tools, lumber & provisions for the persons aforesaid, that he does not know whether said McCune was a citizen of Illinois or not & never averred that he knew, & as to his
178 means, this respondent had no other knowledge than his appearance & representations & that of those who introduced him & recommended him to respondent as a person wishing to purchase said farm, & those persons were persons known to respondent to be men of good character and means & who had shown said land to said McCune before he came to purchase the same of respondent and this respondent don't personally know said McCune was a farmer or a stock farmer, & denies he ever represented he did, but he avers that said McCune was represented to him as a stock farmer, feeder and dealer, & so represented himself to be & had the appearance of being such a person; respondent don't know the intentions of McCune, but avers he represented to this respondent that he intended improving said land thoroughly and did buy material to do so & employed persons to do it, as this respondent knows, & respondent knows the sale was not pretended but in good faith on his part and for all he knows on the part of said McCune that those pretending to know represented to him that he, McCune, was the

owner of 500 head of cattle then coming across the States of Kansas & Missouri to said farm. Respondent denies any use of said McCune improperly as alleged or otherwise.

This respondent admits that *that* about the 30th day of Nov., 1868, said McCune sold and conveyed said land to this respondent, and this respondent avers that the following are the causes and circumstances under which said sale to him from McCune was made, the said McCune after making the proposition to improve said land aforesaid left as respondent was informed by him & others to hurry on his drove of cattle & on or about the last of September or in October of 1868, said McCune returned to Pekin & informed this respondent that he could not get his drove of
179 cattle through the State of Missouri on account of the hostility of the inhabitants or the passage of some law forbidding Texas cattle going through the State & therefore he was compelled to turn back said drove & could not get them through to Illinois that fall, but would get his farm ready & his business arranged for such business another year, & the agitation of the cattle fever or Texas fever question reaching Illinois owners of lands, said McCune became disheartened in his business & offered to sell his farm which he deemed very valuable to this respondent & to others; and respondent after the sale of said farm to said McCune having been offered a large sum, viz. $3000.00 *doll's* over what said McCune had paid him, he, respondent, enquired carefully of the standing & ability to pay of the party offering the same to him & was informed that he was a farmer residing in Peoria county, Illinois, responsible for his offer & said McCune having again offered his farm to this respondent for the notes from him to this respondent & $1000.00 *dollars* advance on said original sale to him, respondent avers he agreed then & there to take the said farm & said McCune procured his wife to execute with himself the deed to respondent for said 600 acres of land in the bill named & respondent gave his note at 12 months time to said McCune for $1000.00 & 10 per cent. interest and respondent avers that afterwards said McCune assigned said note to complainant to whom this respondent afterwards paid all of the same then due with the interest amounting to $1000.00 & over, having before paid $200.00 dollars on said note to one Allison Breedlove.

This respondent avers that he is the sole owner & holder of said 1200 acres of land subject to the mortgage to McCune to com-
180 plainant, but respondent admits said 1200 acres is worth much more than the original debt of Breedlove & avers he paid said Breedlove in purchasing the same of him near $4000.00 *dollars* above any lien of said mortgage of Breedlove to complainant & thought he made a very reasonable purchase.

Respondent denies that said land in said mortgage from McCune to Johnson for complainant includes all the poor, wet, swampy & inferior & worthless land & complainant and her counsel either don't know what the facts are of which they have stated in their bill or if they do know, they have willfully misstated them in

making those allegations, and respondent denies that said release was obtained by false, fraudulent, corrupt or dishonest statements, pretenses or misrepresentations as to value, quality or security although he avers that 600 acres *was* only intended to be mortgaged and he avers he represented it to be 600 acres only & the fact was by mistake one 80 acre tract got in said mortgage & was not discovered until afterwards, & it now appears to be 680 acres & 600 acres alone was ever agreed to be given as security & the other 80 the complainant has no equitable right to a mortgage upon whatever & one of the reasons for taking the purchase back from McCune was the discovery by respondent that he had put by mistake and accident in drawing up the papers 680 acres into said deed to McCune when he had in fact sold him but 600, but the 80 acres being included in said mortgage of McCune for complainant is no cause of complaint to complainant & respondent denies all knowledge of wrong or intent to mistreat, defraud or cheat with which he is charged.

And this respondent insists upon the force and effect of the statute of frauds & perjuries as to all of the alleged parol statements
181 & pretenses alleged, concerning said sales or deeds, release & mortgages of said land alleged.

And this respondent here now again protesting denies every allegation in said bill not hereinabove admitted; and, now having fully answered as to all and singular the allegations of said bill of complaint asks to be hence dismissed with his reasonable costs in this behalf expended.

B. S. PRETTYMAN.

Filed Mar. 14, 1872.

GEO. A. BLANCHARD, *Clerk.*

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of the original separate answer of Benjamin S. Prettyman, filed in said court on the 14th day of March 1872, in the suit lately pending in said court on the chancery side thereof wherein Lydia Bradley Clark was complainant, and Benjamin S. Prettyman and others were defendants as the same appears from the records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

182 Mason County Circuit Court, August Term, A. D. 1873. In Chancery.

EDWARD E. CLARKE, LYDIA BRADLEY Clarke
vs.
B. S. PRETTYMAN, THOMAS B. BREEDLOVE, Absalom McCune.
} For Foreclosure and Relief.

And now at the said August term of said court comes the above named complainant in the original bill named and called Lydia Bradley Clarke and who has sole beneficial and equitable interest in the subject matter of said bill and the object of said bill and suit, and states to the court that said original bill was filed and said suit prosecuted solely in her behalf, but while she was the wife of said Edward E. Clarke in said bill named. But that since the commencement of said proceedings she has been duly and legally divorced from the said Edward E. Clarke and *remmitted* to her former name of Lydia Bradley by the consideration and decree of a competent court having jurisdiction of the said Lydia and Edward E Clarke, and that she is and was solely interested in said suit and the proceeds thereof.

And she therefore moves that the said original bill and proceedings in said case be so amended that she, the said Lydia Bradley, be sole complainant or oratrix and the said Edward E. Clarke a party no longer, and that all proceedings in said suit hereafter be prosecuted and conducted in her name as sole complainant or oratrix and the same as if she had been in said proceedings named Lydia Bradley and the same originally continued in her name; and that the name of "Edward E. Clarke," and "Clarke" and all allegations and statements relating to her said marriage with said Ed-
183 ward E. Clarke in said original bill and proceedings be hereafter treated as if not in said bill contained.

LYDIA BRADLEY,
By her Solicitor, E. G. JOHNSON.

E. G. JOHNSON.
Solicitor for Oratrix.

Filed August 16th, 1873.
LEONARD SCHWENK, *Clk.*

Mason County Circuit Court, Aug. Term, A. D. 1873. In Chancery.

LYDIA BRADLEY
vs.
B. S. PRETTYMAN ET AL.

And now on this day this cause coming on to be heard on the foregoing motion of Lydia Bradley Clarke and the court, being a d

vised in the premises, doth order and decree that said motion be granted and that said suit be hereafter prosecuted as if originally commenced in the name of the said Lydia Bradley and that the said Edward E. Clarke be no longer a party to said bill and that the name of Edward E. Clarke and all that relates to the marriage or marital relation of said Lydia Bradley and Edward E. Clarke wherever the same may occur in said original bill be treated as if not in said bill originally written.

J. W. COCHRAN, *Judge.*

Filed Aug. 16th, 1873.
LEONARD SCHWENK, *Clk.*

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of an original motion made in and to said court at the August term 1873 thereof, to-wit on the 16th 184 day of August the same being one of the days of said term of court in the suit lately pending in said court on the chancery side thereof, wherein Lydia Bradley Clarke was complainant, and Benjamin S. Prettyman and others defendants together with the order of the court granting said motion as the same appears from the records and files in my office remaining.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

Mason County Circuit Court, August Term, 1873. In Chancery.

LYDIA BRADLEY }
vs.
B. S. PRETTYMAN, THOMAS B. BREEDLOVE, ABSALOM MCCUNE. }

The clerk will please issue alias summons to Tazewell to sheriff of Tazewell county, Illinois, returnable to the next term of this court.

Aug. 16, 1873.

E. G. JOHNSON,
Solicitor for Oratrix.

Filed Aug. 16th, 1873.
LEONARD SCHWENK, *Clk.*

Mason County Circuit Court, August Term, A. D. 1873. In Chancery.

LYDIA BRADLEY
vs.
BENJAMIN S. PRETTYMAN, THOMAS B. BREEDLOVE, ABSALOM McCUNE. } For Foreclosure and Relief.

Eldridge G. Johnson, being first duly sworn doth depose and say that I am solicitor for Lydia Bradley, oratrix in the above entitled suit, now pending in the circuit court of the county of Mason aforesaid—that Absalom McCune, one of the defendants in said case, hath gone out of this State and on due enquiry cannot be found in this State so that process in said case can not be served upon him and that upon diligent inquiry his place of residence cannot be ascertained and further deponent saith not.

E. G. JOHNSON.

185

Sworn to and subscribed before me the 13th day of August A. D. 1873.

[Sebastian Kraus, Notary Public, Peoria, Ill.]

SEBASTIAN KRAUS,
Notary Public.

Filed Aug. 16th, 1873.

LEONARD SCHWENK, *Clk.*

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of an original præcipe and of an affidavit of non-residence filed in said court on the 16th day of August 1873 in the suit lately pending in said court, on the chancery side thereof wherein Lydia Bradley Clarke, as complainant was by order of said court allowed to prosecute said suit by the name of Lydia Bradley, and Benjamin S. Prettyman and others were defendants, as the same appears from the records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

186 STATE OF ILLINOIS, } ss:
Mason County, }

In the Circuit Court, August Term, A. D. 1877. In Chancery.

LYDIA BRADLEY } For Relief & to Set Aside Convey-
vs. } ances, Reinstate Mortgage or
BENJAMIN S. PRETTYMAN ET AL. } Trust Deed, & for Foreclosure.

Amendment to the Bill of Complaint in This Cause Made Pursuant to an Order of the Court Entered During said Term of Court.

First. In the twelfth line of the sixth page of the bill after "as follows, viz:" insert the following, viz: The northeast quarter of section twenty-two in township twenty-three north, range six west of the 3rd principal meridian.

Second. After the words "upon him" in the next to the last line on page twenty-four of the bill, insert the following And your oratrix further represents unto your honor that on the 15th day of August A. D. 1868, said Benjamin S. Prettyman, his wife, Sarah A. Prettyman joining with him conveyed to one Ansel Haines the following pieces of said land to-wit: the south half of section twenty-six and the south half of the north half of section twenty-six and the southeast quarter of the southeast quarter of section twenty-two, all in township twenty-three north & range six, west 3rd P. M. by a certain indenture commonly called a warranty deed dated and acknowledged on said 15th day of August A. D. 1868 & recorded in the recorder's office of said Mason county on the 27th day of August A. D. 1868 in Book A 2 at page 232 (to which reference is hereby made for greater certainty) for the pretended consideration of twenty-five thousand dollars—and your oratrix further avers that she is
187 informed and believes said Ansel Haines and Benjamin S. Prettyman are brothers in law—the wife of the said Prettyman being a sister of the said Ansel Haines; that when the said Ansel Haines took said deed he had actual and constructive notice of the trust deed from Thomas B. Breedlove and wife to E. G. Johnson, aforesaid and that the same was a lien and encumbrance upon said land; that although said consideration of twenty-five thousand dollars is expressed in the deed, yet your oratrix avers and charges that it is fictitious and that said Haines never paid any consideration at all for said land and your oratrix further charges that said deed was made by said Benjamin S. Prettyman and wife and received by the said Haines fraudulently—and for the purpose of cheating and defrauding your oratrix and for the purpose of further complicating the title to the said lands and to further cover up and conceal the fraudulent device of said Benjamin S. Prettyman alleged aforesaid. Your oratrix further represents that she is informed that Sarah A. Prettyman, the wife of the said Benjamin S. Prettyman, claims or pretends to have some interest in the lands herein de-

scribed or a part of the same. And your oratrix is unable to set forth such claim or pretence; but your oratrix avers and charges that if she have any interest in said premises or any part thereof it was acquired without consideration, with full notice of the equitable and legal rights of your oratrix and for the purpose of aiding and assisting her husband in the cheating and defrauding your oratrix.

Third. After the name "Absalom McCune" in the third line on page twenty-nine of the bill insert the following, viz: Ansel Haines, Nancy J. Haines, Sarah A. Prettyman and Eliza Breedlove.

JOHNSON, DEARBORN & CAMPBELL, *Sol's.*

Filed Oct. 25th, 1877.
LEONARD SCHWENK, *Clk.*

188 STATE OF ILLINOIS, } *ss:*
Mason County, }

I, C. E. Walsh, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of an amendment made October 25th, 1877, to the original bill of complaints to the suit lately pending in said court, on the chancery side thereof, wherein Lydia Bradley was complainant and Benjamin S. Prettyman and others *was* defendants, as the same appears from the records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

STATE OF ILLINOIS, } *ss:*
County of Mason, }

Of the November Term of the Circuit Court, A. D. 1877.

LYDIA BRADLEY
vs.
B. S. PRETTYMAN ET AL. } In Chancery. To Foreclose & for Relief.

And now comes the said defendants to said amended bill of complaint, Ansel Haines, Nancy J. Haines and Sarah A. Prettyman and saving and reserving to themselves and to each of them any & all manner of advantage and benefit that might or could be had or taken to the many insufficiencies, errors & imperfections in the said complainant's original and amended bill contained, for answer to said original bill or so much thereof as they are severally informed it is necessary & proper for them to make answer unto, jointly
189 and severally answering say that the matter- and things averred and set forth in the answer of said defendant Benjamin S. Prettyman to said original bill filed March 14th, 1872 are

true as therein alleged—and they severally adopt the same as therein set forth so far as any fact is therein averred or alleged and necessary for them to answer severally by the allegations of said original bill, as the answer of these respondents severally thereto, and hereby adopt the same as such.

And they further severally answering, and together with the said Benjamin S. Prettyman, say as to said amended bill of complaint,

That it is true that the said B. S. Prettyman & S. A. Prettyman conveyed said land alleged to Ansel Haines at the date alleged & that the same is recorded as alleged.

But these respondents deny that the same is fictitious or was done without a good & valuable consideration and deny all notices charged in said bill and deny that Ansel Haines is a brother in law of said B. S. Prettyman or that Sarah A. Prettyman is a sister of said Ansel Haines.

And these respondents deny that the said deed to said Haines was fraudulently made or recorded or made to cheat or defraud complainant & complicate the title to the land alleged or cover up the same or for any wrongful purpose alleged in said bill.

And these respondents and each of them expressly deny each and all of other allegations and averments in said bill & amended bill alleged and not herein and heretofore expressly denied, is true and now having fully answered; hence they ask to be hence dismissed with their reasonable costs in this cause expended.

B. S. PRETTYMAN,
S. A. PRETTYMAN,
190 ANSEL HAINES,
NANCY J. HAINES,
By B. S. PRETTYMAN, *Sol.*

B. S. PRETTYMAN, *Sol.*

Filed Nov. 6, 1877.
LEONARD SCHWENK,
Circuit Clerk.

STATE OF ILLINOIS, } ss.:
Mason County, }

I, C. E. Walsh, clerk of the circuit court, in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of the original answer of Ansel Haines, Nancy J. Haines and Sarah A. Prettyman filed in said court on the 6th day of November 1877, in the suit lately pending in said court on the chancery side thereof wherein Lydia Bradley was complainant and Benjamin S. Prettyman and others were defendants, as the same appears from the records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

STATE OF ILLINOIS, } ss:
Mason County, }

Circuit Court, August Term, A. D. 1879.

LYDIA BRADLEY *vs.* BENJAMIN S. PRETTYMAN, SARAH A. Prettyman, Ansel Haines, Nancy J. Haines, Absalom McCune, Thomas B. Breedlove, Eliza Breedlove.	In Chancery. For Foreclosure & Relief.

191 And now on this day comes the complainant, Lydia Bradley, by Johnson and Foster and Dearborn and Campbell, her solicitors, and it appearing to the court herein from the writs issued herein to the sheriffs of the counties of Mason and Tazewell and the returns thereon that the defendants, Benjamin S. Prettyman, Sarah A. Prettyman, Ansel Haines and Nancy J. Haines had been duly served with process herein at least ten days prior to the first day of the present term of this court and had each appeared and filed their answers in this court to complainant's bill of complaint.

And it further appearing to the court that at the time of the commencement of this suit, from the affidavit of E. G. Johnson, one of the solicitors of the complainant, that the said Absalom McCune, was not a resident of this State and that the said complainant under the direction of this court duly published a notice as the law requires in case of non-resident defendants in the Democratic Clarion, a weekly newspaper published in Havana in said Mason county, notifying the said McCune of the pendency of this suit for the time and in the manner provided by law.

And it further appearing to the court that the said defendants Thomas B. Breedlove and Eliza Breedlove had been duly served with process herein for more than ten days prior to the first day of the August term 1879 of this court and the said defendants Absalom McCune, Thomas B. Breedlove and Eliza Breedlove, having been severally three times solemnly called in open court to plead, answer or demur to the complainant's bill of complaint, come not; but herein made default;

It is therefore ordered, adjudged and decreed that the same be taken for confessed against the said defendants, Absolom McCune, Thomas B. Breedlove and Eliza Breedlove.

192 And the court having ordered this cause to be referred to the master in chancery of this court to take proofs, & also by agreement of the solicitors of the complainants and defendants and that Frank Ives, a notary public, should take and report certain other proofs now on file in this cause, and that Watson, a short hand reporter, should take and report the testimony of Allison Breedlove, Thomas Breedlove, Marshall Landers, Pardon Case and Wright Wyatt, now on file in this case, and the said master in chancery of

this court, as well as the said Watson and the said Ives, having reported the same, and the said cause coming on for hearing upon the original and amended bills of complaint and the answers and amended answers of the defendants Benjamin S. Prettyman, Sarah A. Prettyman, Ansel Haines, Nancy J. Haines and the exhibition of the complainant and default of the other defendants, and, the court being fully advised in the premises, doth find:

That the court has jurisdiction of the subject matter and the parties in this cause, and that there is now due from the defendant Absalom McCune, to the complainant, Lydia Bradley, the sum of thirty one thousand and five hundred dollars for principal and interest on the three certain promissory notes mentioned in complainant's bill, each for the sum of five thousand dollars and due and payable in one, two and three years from date with interest at ten per cent. per annum from the thirteenth day of August A. D. 1868, and secured by a deed of trust to one E. G. Johnson of the same date on the following described lands in said trust deed mentioned, to-wit:

The north east quarter; and the north east quarter of the south east quarter of section twenty-two (22), the south half of sec-
193 tion twenty-three (23) and the north half of the north half of section twenty-six (26), all in township twenty-three (23) north, of range six (6) west of the 3rd principal meridian in said Mason county.

It is further ordered, adjudged and decreed by the court that the title to the said lands, so far as the said McCune mortgage is concerned is in fee in the said Absalom McCune, free and clear of any claim in law or equity of the said Benjamin S. Prettyman, Sarah A. Prettyman, Ansel Haines, Nancy J. Haines, Thomas B. Breedlove and Eliza Breedlove and subject to the payment of the said amount due from the said McCune to the said complainant.

And it further appearing to the court that the amount now due from the said Absalom McCune to the said complainant was for the purchase money of the aforesaid lands:

It is therefore ordered, adjudged and decreed that the purchaser under the said sale (unless the amount shall be paid without sale) take the said lands free and clear of all right of dower of the wife of the said Absalom McCune or the wives of either of said defendants.

It is further ordered, adjudged and decreed by the court that the defendant pay to the complainant, within thirty days from this date the said sum of thirty-one thousand five hundred dollars, with lawful interest to be computed thereon, from this date until paid, and also the costs of this suit, to be taxed by the clerk of this court.

And it is further ordered, adjudged and decreed that in default of said payment being made as aforesaid, by the defendants,
194 then, and in that case, the said mortgaged premises mentioned in the bill of complaint in this cause, to-wit:

The north east quarter, and the north east quarter of the south east quarter of section twenty-two (22), the south half of section

twenty-three (23) and the north half of the north half of section twenty-six (26); all in township twenty-three (23) north of range six (6) west of the 3rd principal meridian in said Mason county, or so much thereof as may be sufficient to realize the amount so due the complainant, principal and interest and costs of suit, including the fees, disbursements and commissions on the sale herein mentioned, and which may be sold separately without material injury to the parties interested, be sold at public vendue for cash in hand, to the highest and best bidder, at the front door of the court house in the said county of Mason, that the master in chancery of this court execute this decree; that he give public notice of the time and place of the said sale, by previously publishing the same for the space of thirty days in a newspaper published in said county; and that the complainant, or any of the parties in this cause, may become the purchaser or purchasers; that the said master, on such sale being made execute a certificate or certificates to such purchaser or purchasers thereof, or any portion thereof; which certificate shall specify the lands or tenements purchased by such purchaser or purchasers, and the sum paid therefor, or, if purchased by the complainant in said bill, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed according to law, and the said master shall also file, in the office of the recorder of said county, a duplicate of such certificate or certificates signed by him.

26. And the said master, out of the proceeds of such sale, shall retain his fees, disbursements and commissions on said sale; that he pay the officers of this court their costs in this suit; and that out of the remainder of said proceeds he pay to the complainant the said sum of thirty-one thousand five hundred dollars, together with legal interest thereon, from the date of this decree, to the day of sale; or, if such remainder shall be insufficient to pay the whole of said amount and interest, so much thereof that he apply said remainder to the extent to which it may avail in satisfaction of said amount and interest; and that the said master take receipts from the respective parties to whom he may have made such payments as aforesaid and file the same, together with his report of sale, in this court, and that, in case the said premises shall sell for more than sufficient to pay the principal, interest and costs in this suit, then that the said master, after making payments as aforesaid being such surplus money into court without delay to abide the further order thereof.

And it is further ordered, adjudged and decreed that the defendants and all persons claiming by, through or under them since the commencement of this suit, be forever barred and foreclosed from all equity of redemption, and claim of, in and to said mortgaged premises or any part thereof, if the same are not redeemed according to law, by the defendants, their heirs, executors, administrators or grantees, within twelve months next after the day of such sale, and by all judgment creditors and their representatives and assigns within fifteen months next after the day of said sale; and that at

the expiration of said fifteen months next after the day of
196 said sale, if said mortgaged premises, or any portion thereof, are not redeemed as aforesaid, then, in that case upon the production to the then acting master in chancery, and filing in his office of the certificate of purchase executed by the master in chancery, as aforesaid, to the purchaser or purchasers of said mortgaged premises, or any portion thereof, by such purchaser or purchasers his or their representatives or assigns, said master shall make, execute and deliver to such purchaser or purchasers, or his or their representatives or assigns, good and sufficient conveyance or conveyances, in fee simple of said premises, or such portion thereof as shall have been sold to such purchaser or purchasers respectively.

And it is further ordered, adjudged and decreed, that upon the execution and delivery of the conveyance or conveyances as aforesaid, the said purchaser or purchasers, his or their representatives or assigns, be let into possession of the portion of said mortgaged premises so conveyed to him or them; and that any of the parties in this cause, who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this suit, has come into possession, under them or either of them, on the production of the master's deed of conveyance, and a certified copy of the order of this court, confirming the report of said sale, shall surrender possession thereof to such purchaser or purchasers, their representatives or assigns, and on refusal so to do, will be considered in contempt of this court.

And it is further ordered, adjudged and decreed, that if the moneys arising from said sale shall be insufficient to pay the
197 amount so due the complainant, with interest as aforesaid, after deducting the costs and expenses of sale as aforesaid, that said master specify the amount of such deficiency in his report of said sale, and that on the coming in and confirmation of said report, the defendant, Absalom McCune, who is personally liable for the payment of the debt secured by said mortgage remain liable to pay to the complainant the amount of the balance remaining due on said mortgage.

LYMAN LACEY, *Judge.*

Filed Aug. 22nd, 1879.
LEONARD SCHWENK, *Clerk.*

STATE OF ILLINOIS, } ss:
Mason County, }

I, C. E. Walsh, clerk of the circuit court, in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of the judgment and decree of said court, made and rendered on the 22nd day of August 1879, the same being one of the days of the August term A. D. 1879 of said court, in the suit lately pending in said court on the chancery side thereof, wherein Lydia Bradley was complainant, and Banjamin S.

Prettyman and others were defendants as the same appears from the records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22 day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

198 To the Honorable Lyman Lacey, judge of the circuit court of Mason county, Illinois:

The undersigned, master in chancery of Mason county, Illinois, reports that, in pursuance of a decree of the circuit court of Mason county, Illinois, rendered at the August term A. D. 1879, in case of Lydia Bradley against B. S. Prettyman *et al.* to foreclose mortgage, after having fully advertised the land mentioned in said decree, according to law and the decree, I did, on the 27th day of October, A. D. 1879, between the hours of ten o'clock a. m. and 5 p. m., of said day, at the door of the court house in Havana in Mason county, Illinois, strike off and sell at public sale, the following described real estate, in separate tracts, lying in Mason county, Illinois, to-wit:

The N. E. ¼ and the N. E. ¼ of the S. E. ¼ of section 22, the S. ½ of section 23, and the N. ½ of the N. ½ of section 26, all in township No. 23, north, range No. 6, west 3rd P. M., to Lydia Bradley subject to the equity of redemption, for the sum of ten thousand dollars, she being the highest and best bidder.

Dated this 21st day of November, 1879.

J. H. HAVIGHORST, JR.,
Master in Chancery.

Filed Nov. 29, 1879.
LEONARD SCHWENK,
Circuit Clerk.

Approved.
L. LACEY, *Judge.*

STATE OF ILLINOIS, }
Mason County, } *ss:*

199 I, C. E. Walsh, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of the report of sale made by the master in chancery of said Mason county under and by virtue of decree of the circuit court of said Mason county, rendered at the August term 1879, in the suit lately pending in said court on the chancery side thereof wherein Lydia Bradley was complainant and Banjamin S. Prettyman and other- were defendants together with the approval of said sale, by the judge of said court indorsed thereon, said report of sale and approval thereof having been made November 29th, 1879, as the same appears from records and files in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Havana this 22nd day of May A. D. 1901.

[SEAL.] C. E. WALSH, *Clerk.*

Pl't'ff's Ex. 18, 5/24/1901. J. V. H.

(Mr. WALLACE:) The next thing we offer is a certified copy of the master's certificate of sale or purchase, made in the same proceeding.

A copy of said certificate of purchase so introduced in evidence is annexed hereto, marked Plaintiff's Exhibit 19, is made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

Mason County Circuit Court.

LYDIA BRADLEY
vs.
B. S. PRETTYMAN ET AL. } In Chancery.

200 STATE OF ILLINOIS, }
Mason County, } *ss.:*

I, J. H. Havighorst Jr., master in chancery in and for said county, do hereby certify that in pursuance and by virtue of the order and decree of said court in said cause, made at the August term A. D. 1879, I did, on October 27th, 1879, according to previous notice, given as required in said decree, offer for sale at public auction, at the door of the court house in Havana in said county, the lands and premises in said decree mentioned and involved to the highest bidder for cash.

And Lydia Bradley having bid therefor the sum of ten thousand dollars and — cents, and that being the highest bid at said sale, they were then and there struck off and sold to *him.*

Said premises are situated in said county and State, and known and described as follows, to-wit: The north east quarter and the north east quarter of the south east — of section (22) twenty-two, the south half of section (23) twenty-three, and the north half of the north half of section (26) twenty-six, all in township No. (23) twenty-three north range No. (6) six west 3rd P. M.

Now if said premises shall not be redeemed within fifteen months from said sale as allowed by the statute in such case made and provided, then the said Lydia Bradley, *his* assigns or legal representatives, will be entitled to a deed for the same.

Witness my hand and seal in duplicate, at Havana, Illinois, this 27th day of Oct. A. D. 1879.

J. H. HAVIGHORST, JR. [SEAL.]
Master in Chancery.

201 STATE OF ILLINOIS, } ss:
Mason County, }

I, Wm. M. Duffy, clerk of the circuit court and *ex-officio* recorder of Mason county, in the State aforesaid, and keeper of the seal, records and files of said court and office, do hereby certify the above and foregoing to be a true, perfect and complete copy of a "certificate of purchase" filed for record November 4th, 1879 and recorded in Book "44" of Deeds, Ctfs., &c., at page 310 thereof, as the same appears from the records of said court now in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Havana, Illinois, this ninth day of August A. D. 1895.

[SEAL.]

WM. M. DUFFY,
Clerk of the Circuit Court and ex-Officio Recorder Aforesaid.

PTff's Ex. 19 5/24/1901 J. V. H.

For the purposes of this trial and every other trial in this case, it is admitted by the parties hereto, that a demand for possession was made for these lands involved in all five of the original suits, before the respective suits were commenced, upon the persons in possession of the lands.

And here the plaintiff rested his case.

Thereupon comes the defendant by her counsel and files her written demurrer to the evidence, which is in words and figures as follows, to-wit:

202 STATE OF ILLINOIS, } ss:
Peoria County, }

Circuit Court, September Term, 1902.

H. W. LIGHTCAP }
vs. } Ejectment.
LYDIA BRADLEY. }

Now comes the defendant, after the hearing of the evidence offered by plaintiff to sustain the issues herein upon his part, and demurs to said evidence and says that the same is not sufficient in law: 1st. Because the plaintiff has shown no title in himself as against this defendant.

2nd. Because the evidence shows a mortgage by plaintiff's grantor to E. G. Johnson, trustee, for this defendant, and breach of condition thereof and a foreclosure of said mortgage complete so far as plaintiff's grantor was concerned by which his title, as between him and the mortgagee was divested.

3rd. Because it appears from the evidence that the title of plaintiff's grantor was divested as between him and the mortgagee upon breach of condition of the McCune mortgage, and by final decree in Bradley *vs.* McCune he was decreed to have thereafter, as between him and defendant, only an equity of redemption, and said decree, which was final as between the said parties, further ordered that unless redemption was made according to the said decree and the statutes of this State within fifteen months from the date of sale shown by the certificate of purchase offered in evidence, the title of plaintiff's grantor, and all persons holding under him should be forever barred and foreclosed from all equity of redemption and claim of in and to the mortgaged premises, and there is no evidence offered tending to show that redemption was made from said
203 sale in accordance with such decree, or that said decree has ever been reversed or set aside or modified, but so far as the evidence shows the same is still in full force and effect as between the parties, and plaintiff's title is barred as therein provided.

4th. Because the statute of limitations sec. 30 ch. 77 Rev. Stat. of Ill. passed after the execution of said McCune mortgage materially impairs the obligation of said contract and can not be applied to the defendant without conflicting with art. 1 sec. 10 Constitution of the United States.

5th. Because the statute of limitations sec. 30 ch. 77 Rev. Stat. of Ill. passed after the execution of said McCune mortgage materially impairs the obligation of said contract and can not be applied to the defendant without conflicting with art. 13 sec. 17 of the constitution of 1848 and art. 2 sec. 14 constitution of 1870.

6th. Because it appears from the evidence that defendant's right under said mortgage became vested prior to the passage of sec. 30 ch. 77 Rev. Stat. of Ill. and that prior to said statute and after condition broken the fee simple title to said premises was, as between mortgagor and mortgagee and their grantees, in the latter, and such title can not be divested by said statute without violating the 14th amendment to the Constitution of the United States.

7th. Because it appears from the evidence that defendant's rights under said mortgage became vested prior to the passage of sec. 30 ch. 77 Rev. Stat. of Ill. and that prior to said statute and after condition broken the fee simple title to said premises was, as between mortgagor and mortgagee and their grantees, in the latter,
204 and such title can not be divested by said statute without violating sec. 1979 U. S. R. S.

CHIPERFIELD & CHIPERFIELD &
W. W. HAMMOND,
Att'ys for Def't.

Filed Oct. 17, 1902.

J. C. SEVERNS,
Circuit Clerk.

Which demurrer was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

And the defendant to maintain the issues in her behalf offered in evidence the following testimony, viz:

Counsel for defendant introduced in evidence the deposition of Allison Breedlove, the same being in words and figures as follows, to-wit:

STATE OF INDIANA, } ss:
County of Morgan, }

In the Circuit Court of Fulton County, Illinois, for the —— Term, 1900.

H. W. LIGHTCAP }
vs.
LYDIA BRADLEY. }

Depositions of Elzina Breedlove and Allison Breedlove, witnesses produced and sworn before me, William S. Garber, a notary public of Marion county, State of Indiana, at the residence of Allison Breedlove, near Monrovia, in Morgan county, State of Indiana, on the 7th day of December, 1900, pursuant to the following agreement, E. A. Wallace, Esq., appearing for the plaintiff and W. W. Hammond, Esq., appearing for the defendant.

It is hereby stipulated between the counsel for plaintiff
205 and defendant that the testimony of Elzina Breedlove and Allison Breedlove may be taken before William S. Garber as a notary public by agreement, to be read in evidence on the part of the defendant in this case upon the trial thereof; and the plaintiff reserves all objections as to the relevancy and competency of the testimony, without making special objection at the time and place of taking; that the stenographer may write out the depositions, after they are taken in shorthand and sign them, and that his certificate shall be sufficient as to form.

The said ALLISON BREEDLOVE, being first duly sworn to testify the truth, the whole truth and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination in chief.

Questions by W. W. HAMMOND:

1 Q. You may state your name, age, occupation and place of residence.

A. Allison Breedlove is my name. My age is seventy last September and my occupation is farmer and my place of residence is Morgan county, Indiana.

2 Q. I will ask you if you were acquainted at any time with the

northeast quarter of section 22, and the northeast of the southeast of 22, the south half of 23 and the north half of the north half of 26, town 23, range 3, west, in Mason county Illinois, commonly known as the Hickory Grove farm?

A. Yes sir, I at one time—me and my brother owned it; we owned it in 1855.

3 Q. How long did you know that farm?

A. I have known it ever since 1855.

4 Q. Did you ever live in the neighborhood of it?

206 A. No, I never lived any closer than two miles. Yes, I did live possibly a mile and a half from it, north at one time.

5 Q. How long did you live within a mile and a half or two miles of this place?

A. Oh I think about twelve or fifteen years.

6 Q. Were you an owner of any land in that neighborhood?

A. Yes sir.

7 Q. Do you still own land in that neighborhood?

A. Yes sir.

8 Q. About how much land?

A. 480 acres right east of this piece of land about two miles. I own land within a mile of it now and have for years.

9 Q. Have you been out in that neighborhood since you moved to Indiana?

A. Oh yes sir, frequently.

10 Q. Did you ever know Benjamin F. Prettyman of Pekin?

A. Yes sir.

11 Q. Did you know him well?

A. Yes sir, I knew him as well as any man in our county.

12 Q How long did you know him?

A. I knew him from 1855 to his death about, except the few years I was out here; but then I would see him every time I went to Pekin.

13 Q. Did you have any business relations with him?

A. Yes sir.

14 Q. Were those business relations frequent?

A. Well tolerably so. They were pretty serious, some of them.

15 Q. Did you know Mrs. Lydia Bradley of Peoria?

A. Yes sir.

16 Q. How long did you know her?

207 A. Well, I knew her—I couldn't tell you when I first got acquainted with her. Somewhere in the sixty's though; about 1864 I believe. Bradley, her husband, and I were in partnership in stock in 1864.

17 Q. And have you known her ever since?

A. Yes sir.

18 Q. Did you have business relations with her?

A. Yes sir.

19 Q. Was she ever at your house?

A. Yes sir.

20 Q. Where were you living at the time she was at your house?
A. Living right east of this land two miles, in Tazewell county.
21 Q. About what time was that?
A. That was in—well I am not positive—it was either in 1872 or 1873.
22 Q. What was the occasion of her visit to your house at that time?
A. She wrote me a letter to meet her at Valley. She wanted to go down and see this land—it seemed she had never seen it—to meet her at Valley and take her up over the land. She wanted to see it. I went to the Valley after her and took her down on the land to show her the land, and she didn't know much about that class of land. There was bogs there. They were two or three feet apart, two feet generally. Ant hills had grown up where the ground was wet, and she was stepping around from one to the other and I told her she would go in to her neck if she didn't look out, and she finally stepped off one of them and went in possibly above her knee. She raised up on another bog and she says "I wonder where Prettyman expects to go when he dies." That was as far as she went. She didn't go any more than three or four rods perhaps, and she had to do that by stepping from one bog to another; and she went out——

208

Counsel for plaintiff objected to the answer, which objection was sustained by the court as to any conversation occurring between them, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) I only exclude the talk; anything that happened, that stays in.

23 Q. What did you understand her to mean by the remark that she wondered where Prettyman would go to when he died?

Counsel for plaintiff objected to the question, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

24 Q. Did she get the land from Mr. Prettyman?

Counsel for plaintiff objected to the question, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

25 Q. Had Prettyman been the owner of the land prior to the time she got it?

Counsel for plaintiff objected to the question, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

26 Q. Do you know whether or not that land had ever been under fence?
A. Yes, sir; after studying about it, my uncle put a fence clear

around it, and he couldn't go across a good deal of it with a team, and he floated the posts and plank down from Egypt, floated them down the other way and put the fence clear around.

209 27 Q. What was the object in doing that?

A. For pasture. At that time my uncle had about sixteen hundred or seventeen hundred cattle that the Government turned over to him from the still houses in Peoria. That was in 1864 or 1865.

Counsel for plaintiff objected to the answer and ask to have it stricken, which objection was sustained by the court, and the answer stricken excepting the words "for pasture," to which ruling of the court counsel for defendant then and there excepted.

28 Q. And did he turn the cattle in there?

A. Yes, sir; he turned the cattle in there.

29 Q. Do you know whether any of that fence was left standing at the time that Mrs. Bradley was down there?

A. Well it was not a solid fence, but occasionally there was posts and plank along. Fire would get into this bog grass and burn up the fence, but it would not burn it clean.

30 Q. Did you have any business transactions with Mrs. Bradley at this time in relation to this land, and if so, state what they were.

Counsel for plaintiff objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. Well she proposed to let me take the land and make all I could out of it, and after expenses being paid to give her half. I think that was the contract between me and her.

31 Q. And did you undertake to do that?

A. I did.

32 Q. Now from that time on, what did you do with the lands?

210 A. From that time on up until the time that she rented it to Coddington—no, it was to Hitchcock—I had it up to Hitchcock's lease of it. I think that was about 1881.

33 Q. Now state what you did with the lands.

A. Well the sandy country around there would not raise much hay and timothy, and every little farmer would want to buy a spot, or an acre or two of grass to cut, to feed his horses, and I sold it to various persons, I couldn't tell who now. They would go in there and they would cut the grass, and haul it out late in the fall, the dryest part of the season, and often they would cut a good deal of grass and make roads out of the grass to where they would want to cut.

34 Q. Now I will ask you whether it was possible to do this every year?

A. Well some years there was less cut than others, and some years it was dryer than other years. Now in a dry fall they would cut considerable grass, but if it was a wet fall, it was difficult to get men

to go in there to cut it from the simple fact that of a wet fall they raised more grass, more meadow, on their sandy land.

35 Q. I will ask you whether anybody claimed to be the owner of those lands?

Counsel for plaintiff objected to the question as incompetent, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

36 Q. Did Mr. Prettyman ever come to your house during this time that you were acting as Mrs. Bradley's representative there?

A. Yes sir, a good many times; he used to stop with me for dinner.

37 Q. Did you ever have any conversation with him about these lands?

211 Counsel for plaintiff objected to the question as incompetent, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

38 Q. Did Mr. Prettyman ever claim to be the owner of the land himself?

Counsel for plaintiff objected to the question as incompetent, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

39 Q. Did anybody ever object to your exercising control over the land?

Counsel for plaintiff objected to the question as incompetent, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

40 Q. Did you have settlements with Mrs. Bradley at any time with regard to the proceed of the land?

Counsel for plaintiff objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. Yes sir, every month or two, or two or three months. I would go up and settle with her as to the rent of the land; and I have some receipts from her, but I can not find them, given in 1873, the first time that I rented for her.

41 Q. I show you now a letter press copy book marked "Letter Copy Book" and call your attention to page number seventy-one and ask you if you recognize that letter and the hand-writing of it?

A. Yes sir, that is Johnson's handwriting.

212 42 Q. What Johnson?

A. Well I couldn't give his given name. I don't know what his given name is. I done a great deal of business with that fellow. He was a clerk for Mrs. Bradley at the time.

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over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

43 Q. Did you receive the original of which that is a copy?
A. Yes sir.
44 Q. Have you got the original now in your possession?
A. We looked for it but we could not find it.
45 Q. Did you make a thorough search in every place where that letter would naturally be?
A. Yes sir, among my old papers. I have got a great many old papers.
46 Q. And you were unable to find it?
A. I was unable to find it.
47 Q. Are you able to recognize the hand-writing of Mr. Johnson in the copy.

Counsel for plaintiff objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. Yes sir, I never saw a man write just like he did.
48 Q. And was there anything more that you know about this property or this transaction that I have not asked you about?
A. Well you asked me about the man I rented it to. Clauson is one—my wife remembers him—and another man—what was his name—I am the poorest man in the world to remember names—
but I rented it to Tom, Dick and Harry, anybody that wanted
213 a little piece of grass. It was dull sale, and anybody that wanted a little piece of grass, if I could get anything out of it, I let him have it.
49 Q. Do you remember John Coldington?
A. Yes sir.
50 Q. Did you rent land to him any?
A. Yes sir.
51 Q. For any length of time?
A. I think three or four years. Four years I think, about. John Coldington—he lives there now, don't he?
52 Q. He did up to a short time ago and then he moved away. He is down in the south part of the county now. I believe that is all.

Cross examination.

Questions by E. A. Wallace, Esq.:

53 Q. You said that you have known the land in controversy since 1855?
A. Bought it in 1855, me and my brother.
54 Q. What was your brother's name?
A. David. And in making the deed, they made the deed to David. I wasn't known in the deed at all; but I and him were in partnership at the time.

55 Q. Did any portion of that land ever appear to stand in your name of record?

A. I don't believe it did.

56 Q. How many acres was there in that was known as the Hawkins tract?

A. Twenty-four hundred and forty or eighty. I couldn't say which.

57 Q. It was all contiguous, lying together?

A. Well it didn't lie square. On the west side it jogged off. I think there was one hundred or two hundred and forty acres right west, due west of the summit across the ditch the Hawkin place now, that didn't lay square with the other; and then it jogged off another forty. This forty that Mr. Bradley got that is still further south.

58 Q. I am speaking of the twenty-four hundred acres that you speak of, which embraced this land in controversy did it not?

A. Yes sir.

59 Q. That twenty-four hundred acres all laid in one body?

A. It all laid adjoining. It notched off a little on the west side, forty here and there an eighty.

60 Q. How many acres of it was sold to Mr. Pantycunn that you speak of?

A. I think that there was six hundred and eighty.

61 Q. Do you know whether there was six hundred and eighty or twelve hundred or fifteen hundred?

A. Well now, I am a little mixed on that. I guess it is twelve hundred he got south of the summit the Hicks piece, that was sold. I think Tom Reeves sold it to Pantycunn. No, I will tell you—let me tell you about that—my brother and Reeves—he was sheriff at the time of the county—they bought the whole thing jointly and divided it.

62 Q. When you say the whole tract, do you mean the whole twenty-four hundred acres?

A. Yes sir.

63 Q. And that was Thomas C. Reeves and Thomas Bradley?

A. Yes sir.

64 Q. And they divided it?

A. Yes sir.

65 Q. What part did Thomas, your brother, Thomas Bradley take?

A. He got the south part, the south half.

66 Q. Was that south part any portion of the land that is in controversy?

A. That is what is in controversy now.

67 Q. What part?

A. That is the six hundred and eighty acres I guess what Mr. Bradley had.

68 Q. How many acres did your brother get in the division?

A. Well, I can't tell you just how many acres he did get, but he got—the line ran right in the center of Hickory grove running

east and west, the line did; it cut the grove right in two about in the center, and then the south part belonged to my brother.

69 Q. Thomas?

A. Yes sir, Thomas, and he sold it to Prettyman.

70 Q. Now did your brother own any land on the south of this land that is in controversy?

A. I don't know whether he got any of that or not, south of this land that is in controversy, but my uncle did: my uncle owned——

71 Q. I am not talking about that.

A. I don't know how they divided it.

72 Q. Did Prettyman own any south of it?

A. I think he did. Now, I am not certain about it.

73 Q. You say you think he did?

A. No, I will not say anything about that, because it is this way; where they divided it I don't know, but I had always understood that Mrs. Bradley had got the south end, and that was the land that I showed her the time that we went over there.

74 Q. You understood that Mrs. Bradley got the south end of the land that Prettyman owned did you?

216 A. No, I don't know whether Prettyman got any more than this six hundred and eighty or not. I don't know that he ever got the south end.

75 Q. The land that you showed Mrs. Bradley was the south end?

A. It was the south part of the six hundred and eighty acres, there was six hundred and forty acres laid there in a square and then it jogged off a forty acres on the west side.

76 Q. Was the six hundred and forty acres of land that you showed Mrs. Bradley as hers, laying in a square?

A. About, as I understood it; it may have jogged off some, but I don't think it did. When we ditched that land, we meant to run the ditch right on the line, but whether we did it or not is a question.

77 Q. Could you tell from your own recollection, without assistance from counsel for the defendant, the numbers of the land that you are talking about?

A. I never got them.

78 Q. You could not?

A. No, but I have known the land, this same land—I was over this land in 1855.

79 Q. Now, do you know how many acres of land Thomas Breedlove deeded to Mr. Prettyman at the time, including this six hundred and forty acres?

A. I do not, but he deeded the entire amount of what he had.

80 Q. And whatever amount that he did have and whatever amount Prettyman got, you showed Mrs. Bradley that part of it on the south side?

A. Yes sir.

81 Q. The extreme south side of what Prettyman got?

A. Well, it was on what Mrs. Bradley got of Prettyman, the south side of that tract.

217 82 Q. The south side of what Mr.——

A. Yes sir, the south side of that tract.

83 Q. When you showed Mrs. Bradley the land, how much of it did you go upon?

A. Well, we did not go only about two or three rods.

84 Q. Can you tell what part it was, of the land, that you were upon—that two or three rods?

A. Yes sir, it was the south east corner.

— Q. The southeast corner of the——

A. Six hundred and eighty acres.

86 Q. The extreme southeast corner of the land in controversy?

A. We went right in on that corner.

87 Q. And when you got on to the land two or three rods, you backed out and didn't go any further?

A. I would have gone further, but I didn't think it was safe for her to.

88 Q. Now, that you say, was in 1872?

A. Yes sir.

89 Q. What time of the year?

A. Well, I can't tell you about that. I know one thing, it was terribly hot.

90 Q. You at that time knew that Mrs. Bradley had a mortgage on the six hundred and eighty acres of land in controversy from McCune, didn't you?

A. Well I had heard such talk; I didn't know anything about it.

91 Q. Wasn't it referred to in the exhibit which you say you got from Johnson, as to the McCune land?

A. Yes sir.

93 Q. You knew that that was what she was claiming, that she had a mortgage from McCune?

218 A. Yes sir, she told me she had a mortgage on it. That is all I know about it.

93 Q. And that the mortgage was due and had not been paid and the interest had not?

A. I think she had redeemed it at that time.

94 Q. But the mortgage, I mean, the mortgage?

A. She may have told me these things, but I don't remember.

95 Q. Now let me ask you, are you the Allison Breedlove that testified in the suit brought by the defendant Lydia Bradley against Absalom McCune, B. S. Prettyman, Thomas Breedlove and others, for the foreclosure of that mortgage?

A. I never knew anything about that.

96 Q. Was there ever any other Allison Breedlove living in Mason or Tazewell county?

A. Not that I know of.

97 Q. Do you recollect, Mr. Breedlove, that your testimony was taken in 1878 in the foreclosure suit?

A. I don't remember it.

98 Q. Do you remember of going to Havana in Mason county, Illinois, and having your testimony taken before the master in chancery, in which Luther Dearborn examined you on the part of Mrs. Bradley and Mr. Prettyman was there and examined you?

A. Well I don't remember.

99 Q. Do you remember of testifying in that suit in reference to anything about the attempt to sell the land under the McCune mortgage, and that you went to Havana?

A. I don't believe I ever had a thing in the world to do with it.

100 Q. You don't think you did?

A. No sir; and I know less about that trade than any trade ever was made in our township.

219 101 Q. You don't recollect of testifying in that suit?

A. I do not.

102 Q. Do you know John Fitzpatrick?

A. Yes sir.

103 Q. Do you know Marshall Landers?

A. It seems to me I did know a man of that name—Marshall Landers—no, that is not just the name.

104 Q. Well, a man by the name of Landers: I don't know whether his name was Marshall, or what it was.

A. John Landers—there used to be a John Landers over at Manitou.

105 Q. You knew him?

A. Yes sir.

106 Q. Let me ask you during 1868, 1869, 1870, 1871 and up there, did you see any ditching being done upon this land?

A. In 1868?

107 Q. Well, say 1870 and 1871 and up to 1872?

A. I think about that time—I don't think any new ditches were cut, although there may have been, but I think about that time that Prettyman did do some cleaning up of some ditches there; but I think the same ditches were there that my uncle dug.

108 Q. He was cleaning up some old ditches?

A. I think he did. I remember him having two men there that ditched some for him.

109 Q. That was along in 1870 and 1871 wasn't it?

A. Well I can't tell you the year, but they did clean up the ditches. They deepened them; yes, I remember that.

110 Q. The grass that grew upon the land in controversy as well as the country round about, grew very rank, didn't it?

A. Yes sir.

220 111 Q. Was or was not this tract of land embraced, included in a large body of flat, wet land there upon the Mackinaw bottom, or Quiver bottom?

A. Yes sir.

112 Q. How many acres were there of that, do you suppose, in that swamp of which this land constituted a part?

A. We used to call it from three to four thousand acres of this wet, swampy land.

113 Q. And on this land in the fall of the year, when the grass got dry, fire used to run over it and burn it?

A. Yes sir.

114 Q. Nearly every fall?

A. Yes sir, nearly every fall, and we used to kind of fire against it too. Now, after I had control of it, I would sell what I could in spots over it, and then when they would get their hay all out and put fire to the balance and burn it out.

115 Q. Who would put fire to it—anybody and everybody?

A. Hunters would generally. There used to be deer in there. I have seen thirty-six deer right in there.

116 Q. Now what part of the six hundred and eighty acres was the hay cut upon?

A. Well, just promiscuously all over it.

117 Q. Whereabout over it?

A. Some in the middle and some on the side.

118 Q. In reference to where you and Mrs. Bradley went onto the land two or three rods, in the southeast corner, in reference to that?

A. Well we never cut in that corner; couldn't get over to it.

119 Q. Whereabout would you cut it; how far from the corner?

A. Oh possibly a half mile; may be only a quarter; I
221 couldn't tell.

120 Q. It was all cut within a quarter or a half a mile of that corner of it?

A. Well, I don't know whether it was that way or not. I never thought of such things. It was cut everywhere they could cut it.

121 Q. Was there any cut a mile from that corner, or did the land extend a mile from that corner?

A. Yes sir, just about a mile.

122 Q. Was there any cut as far as that?

A. Yes sir, it was cut within a half mile. Of course you have an idea about how it would be. A man would come to me and buy so much grass and you would sell him maybe so much at so much an acre and he would go anywhere he pleased on it and cut. Now some places the grass growed very tall, some places we had what we called fork top, and they would cut that out first, because where that would grow it was a little solider land than it was where this big, wild, what we call sour grass grew.

123 Q. How much, how many acres would they cut off every year?

A. I can't tell you. Some men would only cut a load or two.

124 Q. Approximately, give me your best judgment?

A. I would not pretend to guess on that at all. I wouldn't know what they would cut. Sometimes they would measure it, but I would not see it at all. There wasn't enough in it for me to go out and look at it. Lots of men would come in there and say, "I would like to have a load of grass," and the grass was a drug on my hands and I would sell him a load, and maybe he would pay me for it right at the time and would go and cut it.

125 Q. You don't know how much other people got that
222 never came to see you?

A. I don't know about that. There wasn't enough in it to take up a man's time looking after it. It was two miles from where I lived, and I would have to go around to get to it. There was some grass cut on every forty of it, some grass, may be a load or two.

126 Q. You would not say it was cut on every forty; would you say it was cut on every one hundred and sixty?

A. Oh yes sir; they finally got a road right through.

127 Q. When was that road put through?

A. That was put through—I can't tell, but Coddington could tell you. He made the road.

128 Q. That was after Coddington went there?

A. No sir, I rented to Coddington.

129 Q. You say the road was put through after you rented to Coddington?

A. It was a grass road. There was no permanent road. They would come to a place a little lower than the other and they would put grass on it to keep the wagon from going down.

130 Q. Who did that?

A. Various fellows. I can't tell you. I think Coddington helped to do it.

131 Q. Was that after Coddington went upon the land?

A. I think it was.

132 Q. The fact is the land lay there like the two or three or four thousand acres of other land out there in a common, did it not?

A. No, not after my uncle put a fence around it. He got considerable off of it that year. He couldn't get there with a wagon, but from Egypt, which is high ground down, he floated the
223 plank and posts down a ditch, and pulled them out just as he needed them, and built a fence along the ditch and it was fenced up there before—well, about 1870, I expect.

133 Q. Your uncle at that time owned the twenty four hundred acres?

A. Yes sir.

134 Q. He put the fence around the whole twenty four hundred acres?

A. I think so. No, he didn't. This forty that zigzagged—he just put on a straight line through. You see there are three sections right in there.

135 Q. Did he fence all three of the sections?

A. I think he did.

136 Q. They were fenced in a common enclosure, were they not?

A. Yes sir.

127 Q. So far as this particular land was concerned there never was a fence around this six hundred and eighty acres to your knowledge was there?

A. Well it was fenced in with a general enclosure, except the forty. The forty, I do not think, ever was fenced.

128 Q. But so far as this land was concerned, it was fenced in common?

A. Yes sir.

129 Q. By your uncle?

A. Everybody was fenced that way.

130 Q. Then when you speak about a fence upon this particular land, you don't know whether it was on this particular land or on some other land?

A. Well, there was three sides of this particular land fenced, until it got down to the grove, and I don't remember whether there was a fence put through the grove or not. The south side of this land was fenced and the west side and the north side.

224 131 Q. Let me ask you, did your brother, when he owned it, fence the whole three sections, put a fence around the whole of it?

A. That is the reason I can't give you a definite answer. I think when my brother and Reeves bought it, that they put a partition fence in.

132 Q. That was on the twelve hundred acres?

A. Yes sir.

133 Q. Between the two twelve hundred acre tracts?

A. Yes, sir.

134 Q. Now this particular six hundred and forty acres didn't have a particular fence around it?

A. I don't think it was ever fenced to itself, but it was fenced on the west, on the south and on the north, at one time. I know that. My uncle put that fence there.

135 Q. It was fenced where the lines were?

A. Yes sir.

136 Q. Of the Breedlove tract of land?

A. Yes sir.

137 Q. Wherever that was.

A. Now, I don't remember whether there was a fence put through the hickory grove on that land, or not, or whether they depended on the ditch making a fence.

Re-examination.

Questions by W. W. HAMMOND, Esq.:

138 Q. Do you remember Pres Trent?

A. Yes sir, I know him, or did.

139 Q. Where did he live?

A. He did live at Manitou. Oh no, he lived on the south end of this twelve hundred acres, I think; but I know he lived there.

225 140 Q. Did you ever have any trouble or any business with him in regard to the fence between his land and this?

A. Yes.

141 Q. State what that was?

A. He wanted me at one time to fix the fence on the north side.

142 Q. On his north side?

A. On the north side of Mrs. Bradley's land and he had a little temporary fence along the foot of the hill, along the high land. I proposed to him that we build the fence straight through on the line between him and Mrs. Bradley. That was directly after he got the cattle put in there. I don't know, I may have taken some cattle in there to pasture for all I know. He complained that they got in his corn. He objected to putting the fence on the line between him and Mrs. Bradley from the fact he said in the fall and winter, when the hunters got in there, they would set it on fire and burn it up. So I think I let him pasture free gratis to keep from making a fence for Mrs. Bradley, because I didn't think it would amount to anything for her, and he just retained his fence along. I think he had a hundred and sixty acres he claimed there, but I always got along with them as quietly as I could because it was considered by everybody over there that Mrs. Bradley was rich and she had just as well give them the grass as not. *I* man don't make anything fussing with his neighbors any how.

Counsel for plaintiff objected to the answer, and ask that it be stricken, which objection was sustained by the court, and the answer stricken, to which ruling of the court, counsel for defendant then and there excepted.

143 Q. What was the name of the uncle whom you have spoken of as having owned the land at one time?
226 A. Bailes Breedlove.

Further the deponent saith not.

ALLISON BREEDLOVE.
Per WM. S. GARBER,
Notary, as per Stipulation.

Counsel for defendant introduced and read in evidence the deposition of Elzina Breedlove, which as taken and transcribed by the notary, is in words and figures as follows, to wit:

The said ELZINA BREEDLOVE, being first duly sworn to testify the truth, the whole truth and nothing but the truth relative to said cause, deposeth and saith:

Examination in chief.

Questions by W. W. HAMMOND, Esq., counsel for defendant:

1 Q. You may state your name, age and place of residence.
A. Elzina Breedlove, age sixty-three, Monrovia, Indiana.
2 Q. And what is the name of your husband?
A. Allison Breedlove.
3 Q. Did you, at one time, reside in Tazewell county, Illinois?
A. Yes sir.

4 Q. When you lived in Tazewell county, were you acquainted with what is known as the Hickory Grove farm?

A. I was.

5 Q. How near did you live to that place?

A. Oh it must have been about two miles or two miles and a half.

6 Q. At what time was this?

A. I think it was in the summer of 1872, mid-summer, I think.

7 Q. If anything occurred at that time that drew your at-
227 tention particularly to this farm, you may state what it was.

A. Nothing except Mr. Breedlove had charge of it, or was Mrs. Bradley's agent at that time.

8 Q. How many acres of land was there of it?

A. I think it was a half section of land.

9 Q. Do you know just the number of acres, whether it was 640 or——

A. Well I thought that she had a section of land at that time. That was my understanding.

10 Q. But you didn't know the exact number of acres?

A. No sir, I could not state that.

11 Q. Where did this land lie with reference to Hickory Grove?

A. I think southwest of Hickory Grove.

12 Q. And was any part of Hickory Grove mound on her land?

A. I think it was.

13 Q. Were you acquainted with Mrs. Bradley?

A. She was at our house and took dinner with us.

14 Q. At what time?

A. Well I could not state exactly whether it was July or August, somewhere there; it was very warm weather, I remember.

15 Q. In what year, do you say?

A. In 1872.

16 Q. And what was the occasion: how did she happen to be there?

A. She wrote to Mr. Breedlove to meet her at the train over at Green Valley and he brought her to our house and took her over the land to view it.

17 Q. You say your husband acted as agent for Mrs. Bradley of the land?

A. Yes sir.

18 Q. When did he commence to do that?

A. I cannot say whether it was in 1871 or 1872.

19 Q. Was it at this time that she was there?

228 A. Yes sir.

20 Q. And how long did he continue agent from that time on?

A. Well it must have been five or six years any way.

21 Q. How do you fix the date as in 1872.

A. Well by letters that we received from her. I remember that.

22 Q. Did Mrs. Bradley tell you how old she was at that time?

A. Yes sir, she told me she was fifty-six years of age.

23 Q. Is there any other incident that happened at that time, any

person who was present at your house, by which you could fix the time?

A. Yes sir, we had a lady, a Miss Porter visiting us at that time.

24 Q. Is she living now?

A. No, she died that fall.

25 Q. And about how long has she been dead?

A. Well she died, I think it was somewhere in November of 1872—Eliza Porter.

26 Q. What did Mr. Breedlove and Mrs. Porter do that day in regard to the land?

A. He took her up to view it—I don't remember—she got out and walked over it, and it was so quaggy she said she could shake it just by stepping on it.

27 Q. Did you hear Mrs. Bradley state, or do you know in any way what her purpose was in coming down there at that time?

Counsel for plaintiff objected to the question, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) There hasn't been a line of this deposition that has been read yet that would be competent if objected to, except the fact that she was there. It is all hearsay, but it is so immaterial that is why it is *was* not objected to.

229

28 Q. She thought it was not as good as she expected?

A. Yes sir.

29 Q. Did you hear the conversation between her and your husband in regard to on what terms he was to take the land?

A. Yes, sir, he was to have it for the half that he received from it.

30 Q. And what use was the land capable of at that time?

A. Well it was so miry they could not cut very much pasture, but they did cut, or Mr. Breedlove let a little of it for people to cut grass on, just the high spots.

31 Q. Were they able to get on the land at any time in the year? Were there times when the land was dry enough to get on?

A. I think they would have to carry the hay out, a good deal of it. The horses would sink down so that they could not haul it.

32 Q. But they were able to make some use of the land every year?

Counsel for plaintiff objected to the question as leading, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

33 Q. Did Mr. Breedlove cut the hay himself?

A. No sir, he let it to other parties.

34 Q. Can you remember the name of any parties to whom he let the land for that purpose?

A. I think one was Mr. Clauson. I can't give his full name. I do not remember.

35 Q. Anybody else that you think of?

A. And I think a Mr. Martin.

36 Q. Do you think of anything else that I have not asked
230 you about that you know about the land?
A. Well I believe not. When Mr. Breedlove had control of it, he went up and settled with Mrs. Bradley is all I can remember. I know she said when she shook the ground she wondered where Mr. Prettyman would go to; when she walked on it and shook the ground she wondered where Mr. Prettyman would go to.
37 Q. When?
A. When he died.

Counsel for plaintiff objected to the last two questions and answers, and asked that the answers be excluded, which objection was sustained by the court and the answers excluded, to which ruling of the court counsel for defendant then and there excepted.

38 Q. Did you know Mr. Prettyman?
A. Yes sir, personally. He has taken dinner with us frequently; been to our house often.
39 Q. Did you ever hear him say anything in regard to this land?
A. Not that I remember of.
40 Q. Did he know the relations that Mr. Breedlove sustained to Mrs. Bradley in regard to the land?
A. Yes sir, now that was generally known all over the country, that he was her agent. Every one came to him for any information concerning the land.

Cross examination.

Questions by E. A. WALLACE, Esq.:

41 Q. You say that you and your husband lived in Tazewell county?
A. Yes sir.
42 Q. In what direction did you live from this land?
A. East.
43 Q. And about what distance?
231 A. Two miles I think.
44 Q. Were you living upon the land that your husband farmed?
A. Yes sir.
45 Q. How long did you continue to live at that place?
A. Sand Prairie township, fourteen years.
46 Q. Where did you move to when you moved away from this farm?
A. To this place here, to Indiana.
47 Q. Did you go with your husband and Mrs. Bradley to look at this land?
A. No sir, she came to our house and took dinner and stayed several hours in the afternoon, until train time.
48 Q. When you say "She came to our house and took dinner," you mean where you lived in Sand Prairie, do you?

A. Yes sir.

49 Q. Two miles from this land?

A. Yes sir.

50 Q. Who went with your husband and Mrs. Bradley to look at the land?

A. No one.

51 Q. You were not present at the time they were on the land then?

A. No sir.

52 Q. Did you see Mrs. Bradley on the land?

A. No sir.

53 Q. Do you know that she ever was upon it?

A. I have her word for it and Mr. Breedlove's.

54 Q. Do you know of your own knowledge that she ever was upon the land, except by what some one has told you?

A. Not except what Mrs. Bradley told me and Mr. Breedlove.

55 Q. You know nothing about then, her going upon this land, or what she said or done upon the land, except what you have been told?

232 A. Except what she told me.

56 Q. Except what she told you?

A. Yes sir, and they talked the matter over at our house.

57 Q. Then what you have been testifying to is what you heard Mrs. Bradley say that she done?

A. Yes sir.

58 Q. In talking it over at your house?

A. Yes sir.

59 Q. With your husband?

A. Yes sir, and letters we received afterwards.

60 Q. And letters that you have received from her?

A. Yes sir.

61 Q. Who received those letters?

A. Mr. Breedlove received them.

62 Q. Have you any of those letters now?

A. No, I think not. No sir.

63 Q. Do you take care of your husband's letters yourself?

A. Yes sir.

63½ Q. Have you made any search for any of them?

A. Yes sir, I looked for the letters.

64 Q. To what extent?

A. I look over most of our papers.

65 Q. Do you know when it was that Mrs. Bradley wrote to your husband to meet her to go and look at the land?

A. I cannot state exactly. Now, it was very warm weather; it was the last of June, or July or August, I would not state which month; but it was somewhere in the summer. It was very warm weather.

66 Q. You think it was in the summer of 1872?

A. Yes sir, very warm weather, I am positive it was that.

67 Q. Were you ever upon the land yourself that you know
233 of, the land in controversy?
A. I do not believe that I ever was.
68 Q. Do you know whether you ever saw it?
A. Yes sir, I have seen the land.
69 Q. From a distance, have you, in passing along the road?
A. Yes sir.
70 Q. Does it lie in one body or in a square body, or in what shape does it lie?
A. I can not tell that, sir.
71 Q. You do not know anything about it—the land at that time was what you call wild land, was it not?
A. Yes sir, marshy.
72 Q. Wild, marshy land?
A. Yes sir.
73 Q. And what year was it that you left Tazewell county and moved to Indiana?
A. Why it was in 1882.
74 Q. Did you ever see anybody making hay upon the land?
A. Why yes sir, I have.
75 Q. Who did you see making hay?
A. I cannot tell you who now, but they used to come, they would come to our house to settle with Mr. Breedlove. I remember those two men I named.
76 Q. Do you remember what year it was that they cut hay there?
A. Well, in 1873, I think in the fall of 1872 and 1873.
77 Q. You think it was in the fall of 1872 and 1873?
A. Yes sir.
78 Q. Did they cut it two falls?
A. He sowed it. I cannot say positively it was the same land, I can not tell. The men would come often to settle with him, but I didn't pay much attention to it.
234 79 Q. Then it was just simply what passed between you and your husband and the men when they came to where you lived in Tazewell county?
A. Yes sir, they came to our house, and then the letters that Mrs. Bradley wrote back and forth, and from Mr. Johnson for her.
80 Q. Mr. Johnson was Mrs. Bradley's agent and attorney was he?
A. Yes sir.
81 Q. Did you, or not, understand that Mrs. Bradley held a mortgage upon the land from McCune?
A. I understood she held a mortgage, yes sir.
82 Q. And that neither the principal nor interest was paid—you understood that, did you?
A. No, I could not state that.

Further the witness saith not.

ELZINA BREEDLOVE.
Per WM. S. GARBER.
Notary, as per Stipulation.

STATE OF INDIANA, }
County of Morgan, } ss:

I, William S. Garber, a notary public within and for said county, hereby certify that the above Elvina Broadbow and Allison Broadbow were by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause; that their depositions were reduced to writing by me, that the said H. W. Lightcap attended by E. A. Wallace, his attorney, and said depositions was taken at the residence of Allison Broadbow, near Monrovia in Morgan county, State of Indiana, on the 7th day of December, 1900, between nine o'clock a. m. and 12 o'clock noon of said day.

In testimony whereof, I have hereunto set my hand and notarial seal, this the 13th day of December, 1900.

WILLIAM S. GARBER,
Notary Public.

[SEAL.]

My commission expires March 26, 1902.

GEORGE GILSON, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. H. M. CHITTENDEN:

Q. State your name in full if you please?
A. George Gilson.
Q. Where do you reside Mr. Gilson?
A. Havana.
Q. What is your age?
A. My age is 54.
Q. What is your present business?
A. Trading.
Q. I will ask you Mr. Gilson if you are acquainted with the lands in controversy in this case, the 640 acres?
A. I used to be.
Q. Did you know those lands in 1872?
A. Yes, sir.
Q. Where did you reside in 1872?
A. In Tazewell county, in Mackinaw bottom.
Q. How far from those lands?
A. Oh about a mile or a mile and a half part of the time.
Q. In what direction?
A. North-east.
Q. With whom did you there reside?
A. I worked for Burt Broadbow and a fellow by the name of Hicks—Lem Hicks.
Q. Were you acquainted with Allison Broadbow?
A. Yes sir, seen him every day.

Q. How far did you reside from the residence of Wilson Bradleys?

A. When Al lived on the bottom we were about close on to two miles; may be a little bit over.

Q. Were you at any time in the employ of Wilson Bradleys?

A. Not directly.

Q. I will ask you if you from time to time assisted Wilson Bradley in the performance of his business?

A. Yes sir.

Q. And about when did you first commence to so assist him?

A. [illegible] from 1876—along from 1875 to '77.

Q. A period probably then of about two years?

A. Yes.

Q. I will ask you if along about 1872 you saw Mr. Lytle Bradley?

A. Yes sir.

Q. Do you remember the occasion upon which you first saw him?

A. Yes sir.

Q. You may state what that occasion was?

Counsel for plaintiff objected to the question as immaterial which objection was overruled by the court to which ruling of the court counsel for plaintiff then and there excepted.

A. He was down there in company with Wilson Bradleys to look at this piece of land.

Q. Now where did you see him upon that occasion?

A. I saw him at Mr. Wilson Bradleys's house and also on the line of his land.

Q. Now did you go with Wilson Bradleys and Mr. Bradley from Wilson Bradleys's house?

A. [illegible] to the land, yes sir.

Q. Do you recollect now how you went?

A. They went in a buggy and I rode a horse through.

Q. You accompanied them at the time?

A. Yes

Q. You may state whether or not at that time Mr. Bradley, Wilson Bradleys and yourself went in and upon this land?

A. We went to the line of the land. I don't think that any of us were on the land very far.

Q. But to some distance?

Counsel for plaintiff objected to the question, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

Q. You say you were upon the land to some distance?

A. I was.

Q. Was Mr. Bradley upon that occasion?

A. I couldn't say whether Mr. Bradley was there or not. I don't hardly think Mr. Bradley was upon his own land.

Q. Your recollection upon that point is not clear?

A. Not very good. I don't think she was over the little ditch.
Q. But as to that you are not able to positively state?
A. No.
Q. Did you know what the purpose of Mrs. Bradley was in going to and upon this land, if she did go on it?

Counsel for plaintiff objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. Yes sir.

(By the COURT:) I think he would have to tell anything that was said.

Q. Well was anything said upon that occasion as to her purpose?
A. Why everything that was said was between Al. and me.
238 He said Mrs. Bradley was going down to look at her purchase; see what she thought about it.
Q. Well did she go upon this land?

Counsel for plaintiff objected to the question as leading, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

Q. Did you say that you were able to state whether Mrs. Bradley did actually go upon this land?
A. I said I was not able to state.
Q. You may state at this time what was the condition of this tract of ground,—describe it so that the jury may see it as it existed then?
A. Well it was pretty soft at that time?
Q. Well was there water standing upon it?
A. In places.
Q. And where there wasn't water what was there?
A. A little bit of sod, and grass, marshy land.
Q. Was it marshy bog land?
A. Yes sir.
Q. How deep would the water stand on this land in places?
A. Oh it never got very deep. Just simply the water would be three or four inches deep in places.
Q. Was you generally familiar with the values of lands in that vicinity at that time?
A. No sir.
Q. Would you be able from your knowledge of such matters to place a valuation upon this land?
A. I wouldn't like to.
Q. Now how long did Mrs. Bradley remain there at this time?
A. Oh she might have been there an hour and a half or
239 two hours; maybe not so long.
Q. You are not able to state the time?
A. No.

Q. Now do you know whether upon that occasion Mrs. Bradley appointed Allison Breedlove her agent?

A. Well I know what Al. said.

Q. Well did you hear anything of that kind between Mrs. Bradley and Allison Breedlove?

A. Yes sir.

Q. Now you may state what you heard of that?

Counsel for plaintiff objected to the question as incompetent, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. I heard Mrs. Bradley tell Allison she wanted him to take care of it—to look after it for her for a certain per cent.

Q. Do you remember what that per cent. was?

A. No sir.

Q. But that was right there at the time she was either on or at the edge of that land?

A. Yes.

Q. Now did Breedlove consent to undertake——

A. Not that I heard, but he did afterwards I guess—I don't know.

(By the COURT:) Don't guess; tell what you heard.

Q. Do you know of Breedlove after that time for any considerable length of time acting as the agent of Mrs. Bradley?

A. Yes sir.

Q. Now you may state from the time of your visit there, fully as far as you can recall and recollect what Allison Breedlove did, and if you assisted him in doing anything, what you did?

240 A. Why I used to kind of watch people from slipping in there and cutting wood off of Hickory grove for Allison Breedlove, because Allison wasn't there all the time, and I was in the bottom all the time looking after cattle and so on for the balance of the Breedloves, and he told me if anybody wanted anything, any grass or anything, to sell it to them.

Q. For whom?

A. For him.

Q. As what?

A. As Mrs. Bradley's agent.

Q. Now you say from time to time you prevented people from going in and upon this land?

A. Yes sir.

Q. In what capacity was you acting?

A. I was herding cattle.

Q. I know, but why did you?

A. Just simply to accommodate Allison Breedlove.

Q. As the agent of Mrs. Bradley?

A. Yes sir.

Q. What if anything did you do with reference to the enclosing of this land?

A. Helped to put up a shadow of a fence there sometimes: once in a while.

Q. When did you first do any fencing upon this land after 1872?

A. The year after I think it was. The next spring we undertook to put up a fence.

Q. When you say we who do you mean?

A. The men that were working for the Breedlove outfit, myself and others. We worked for all the Breedloves. You might say it was all a combine they was in.

Q. Where did you put up this fence?

241 A. On the east line of Mrs. Bradley's tract of land.

Q. Now, how much of the fence did you put up on or about her land?

A. Oh we patched up and fixed up half or three quarters of a mile there.

Q. You may state whether there had been at some prior time another fence there on that land?

A. Yes sir, there was pieces of posts there, but it would get burned off about every year and we would repair it.

Q. And when you speak of fixing and patching a fence, do you mean this old fence?

A. Well we strung new wires when we put it up.

Q. Now state just where you strung those wires.

A. We commenced about—well I don't know that I could tell you—from the little mound we ran north a half a mile, half or three quarters, and then we went south from there. I don't know how far, and this line runs right along east of the little mound we were on.

Q. Now I will ask you if this fence you put up was an outside boundary fence of Mrs. Bradley's?

A. Yes sir, it was, between Mrs. Bradley and Matthew and Mose Meeker. I suppose it was this, yes.

Q. And will you tell the jury how much fence you put up there altogether in 1873?

A. Oh altogether we must have put up close on to a mile.

Q. That is the boundary fence of her land?

A. Yes sir.

Q. Now for what purpose did you put up this fence?

A. Keep the cattle in there.

Q. What cattle?

A. Some cattle they had took to pasture.

242 Q. That who had took to pasture?

A. I believe Allison Breedlove.

Q. On whose land?

A. On Mrs. Bradley's.

Q. Had he cattle in there? How long had these cattle been in there at the time you put up this fence if you know?

A. Oh they hadn't been in there very long. We put the fence up—the cattle were in on the bottom when we put the fence up. We put the fence up early in the spring.

Q. For the purpose——
A. Oh holding the cattle over there if we could hold them.
Q. On the Bradley land?
A. Yes.
Q. Do you know of your own knowledge whose cattle those were, or were they the cattle of any particular person?
A. Weren't the cattle of any particular person. They were cattle that wanted pasture there—everybody around—little bunches.
Q. And who made the arrangements for the pasture of those cattle?
A. Al Breedlove.
Q. As what?
A. As agent for Mrs. Bradley?
Q. Now did you do anything else during the year 1873 on that land
A. Nothing only look after some stock that was running around over there.
Q. How frequently would you be in and upon that land in the year 1873?
A. I was there once a week any how, if not oftener.
Q. And when you would go onto the Bradley land there once a week, what would you do?
213 A. Part of the time be pulling cattle out of the mud.
Q. What else?
A. Looking after the fence, see the fence wasn't down, ride around that, and then if there was anything down pull it out.
Q. Caring for the stock and seeing what was the condition of the affairs there?
A. Yes sir.
Q. How long did that continue during the year 1873?
A. Well until along late in the fall.
Q. At whose request if the request of anybody did you do that?
A. Done that for Bart Breedlove. He was farming in there, and we used to turn in our horses in there, and take in cattle for Al. I was working for Bart Breedlove.
Q. You was doing this to accommodate Allison Breedlove?
A. He told me to keep the thing repaired for Al.
Q. Now in 1874 was you in or about that land?
A. Not much.
Q. Was you in and about that land in 1875?
A. Not very much.
Q. Well was you at all?
A. Yes sir, I was in there once or twice.
Q. Do you know what was done with the land in 1874—with the Bradley land?
A. I couldn't tell.
Q. Do you know of your own knowledge what was done with the Bradley land in 1875?
A. There was a trade made there of some kind: I don't know just what it was.

Q. During the year 1873 have you any knowledge of any hay being cut off of that land?

244 A. Yes sir.

Q. Who cut hay off of the Bradley land during that year?

A. Oh I couldn't tell their names. There was several cut hay—little patches around, that Al kind of sold for hay and got what he could out of it. A good many of them is dead that cut hay there.

Q. Are you about to state now over what parts of this 680 acres they cut hay in that year?

A. They cut hay wherever they could get dry footing enough to cut it.

Q. I will ask you if you can tell the jury about on what portions of the land they cut hay?

A. Oh they would cut wherever they could find a good spot, from the mound south—from the little mound south, but never did cut no great amount in any one place—I don't suppose more than two or three acres cut in any one place on the land—wherever they could find what they wanted and get to it.

Q. Is there any mound on this Bradley land that had a particular name known in the neighborhood there?

A. Why there was the Hickory grove.

Q. Hickory Grove farm — was called?

A. Yes sir, it is now.

Q. Did you know Benjamin Prettyman?

A. Yes sir.

Q. Did you ever have any talk with Benjamin Prettyman concerning this land after 1872?

A. Oh not direct as I know about the land. I have had lots of talks with Ben Prettyman.

Q. Well relating to the land in any way?

A. Nothing only to bring it up once in a while about his and Mrs. Bradley's loan on the land.

245 Q. Now if upon those occasions Prettyman made any statement of any kind, tell the jury what it was—statements concerning this land?

Counsel for plaintiff objected to the question as incompetent, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

Q. Now what do you say?

A. I never heard Ben deny but what it was Mrs. Bradley's land.

Q. What did he say though about this land?

A. Nothing was said only we used to josh him about selling the land—getting such a price for it, and he kind of laughed in a joking kind of way, which we all did at that time. "Why," he would say "Mrs. Bradley has got the money, she can spend it,"—something that way—pass it off.

Q. Did you and he ever have any talk about Mrs. Bradley occupying this land, or about to improve it, or drain it, or anything like that?

A. No sir.

Q. Did he ever make any statement as to whose land this particular farm was?

A. Not to me. I never heard him deny but what it was Mrs. Bradley's.

Counsel for plaintiff objected to the answer and asked that it be excluded, which objection was sustained by the court and the answer stricken, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) Tell what you heard him say. Don't tell what you didn't hear him say.

A. All I heard him say was about the land. If it was wet, Mrs. Bradley had the money to ditch it.

246 Q. Now do you know—have you been back in that neighborhood from time to time?

A. I haven't been back up there for twelve years.

Q. Do you know of Mrs. Bradley ditching this land?

A. No sir.

Q. I will ask you to state if you know who was occupying this land for the years 1872, 1873, 1874 and 1875?

(By the COURT:) He can tell what anybody done.

A. I think Mr. Coddington lived on the land about then. I couldn't fix the date, but he moved on there some time while Al had charge of it.

Q. During the year 1872 when you say you first commenced to have some connection with this land for Allison Breedlove, who was occupying it then?

A. I couldn't say for sure. There was some old trapper on the Hickory grove there—I don't know who that was, and Mr. Coddington went there after him I think, and I don't know as I could tell just when that was.

Cross examination by Mr. WALLACE:

X Q. George, you say you was working for the Breedloves?

A. Yes sir.

X Q. For Bart Breedlove?

A. Yes sir.

X Q. And Bart Breedlove was a brother to Allison Breedlove?

A. Brother to Al.

X Q. And brother to Tom Breedlove?

A. Yes sir.

X Q. And brother to David Breedlove?

A. Half brother to Dave.

X Q. There were quite a number of Breedloves about Tazewell county?

247 A. A whole bunch of them.

X Q. How many of them?

A. Well there was Tom and Al and Dave is three, and Bart and Aldrich is five, and Bales, that was an uncle of them, that was the sixth one I knowed.

X Q. And you were herding cattle principally there in 1872 and '3 in the bottom?

A. Yes, and before that too, for the outfit.

X Q. Now let me ask you,—just describe to the jury as near as you can the law of this land and the lay of the land around it there in the bottom—three or four or five thousand acres—say what kind of land it was.

A. Well it was all soft land up there where Mrs. Bradley's land was, but down towards the creek there it was good farming land, except it overflowed every year. Them times both it and Mrs. Bradley's land, there was hundreds of acres there we couldn't get across with a wagon.

X Q. This land what you speak of as the Bradley tract of land—this land in controversy—it lay out in common with other lands did it, that they couldn't farm?

Counsel for defendant objected to the question as not cross-examination, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

X Q. Well now about how many thousands of acres would you say George there was lying out in common with this Bradley land in 1872 and '3?

A. There was a whole lot of swamp land in there—all the land between Mackinaw bottom and Manito. There wasn't two months of the year you could get through there with a horse.

248 X Q. And there wasn't two months of the year you could hardly herd cattle there?

A. No, took two men to get one up.

X Q. Give us some idea of the number of acres in there?

A. Well must have been some two or three thousand acres. That land south of the mound, there was 2400 acres there.

X Q. Including this Bradley tract?

A. Yes, that ran in that piece clear down into the Alwood land. Any amount of that Alwood land was a swamp then.

X Q. There was about 2400 acres of this Bradley land that the Breedloves kind of exercised control of?

A. Yes sir.

X Q. And this land that is in controversy in this suit, and that 2400 acres, were some of what is called the Breedlove pasture, or used by them for pasture?

A. Yes, principally by the Breedloves for pasture, a good deal of it.

X Q. And that 2400 acres, was it in a common enclosure or was it enclosed?

A. It wasn't enclosed only on one side, where we farmed on one side. There is where we made and kept a shadow of a fence up.

X Q. There was a shadow of a fence kept on the east side of this

Bradley land, and the east side of the Breedlove tract there, that wasn't farmed, between the farm land?

A. No, there was no fence only on the east side of Mrs. Bradley. Breedloves never owned no land up directly east of Mrs. Bradley. Their land lies north.

X Q. I say extending on up north?

A. Yes, there was a little fence on the north end, may be a quarter or a half a mile there—kind of break so the herders could turn them if they come that way.

249 X Q. As an assistant herder?

A. Yes sir.

X Q. Well now George, that was '72 and '3 you say?

A. '72 and '3 and along in there—I couldn't fix the date.

X Q. Now in herding the cattle there, and people turning out cattle, cattle used to run out from Manito without anybody with them?

A. They couldn't get there; had to go around through the sand and come over through the farms.

X Q. Which one of the Breedloves now put up the fence—engaged in putting up this fence on the east side of Bradley and the Breedlove tract north of Bradley's?

A. Why none of the Breedloves worked at the fence. There was two of Bart's men, and one I think of Al's worked there at this fence. Bart sent myself and another gentleman, and Al had a man down awhile. John Fitzpatrick I think was there. This John Fitzpatrick owned an eighty lying right east of this land.

X Q. Then the only thing to indicate anybody was there in possession of that land, was simply what would indicate lands lying outside right joining this?

Counsel for defendant objected to the question as calling for a conclusion, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

X Q. Well there was none of the land that was enclosed and completely surrounded by a fence?

A. No, sir.

X Q. Now you say the first one you knew of living there was an old trapper on the Hickory grove?

A. That is the first. There was a little shanty in there,
250 and a fellow was trapping there the first I knew.

X Q. Do you know whether that shanty was on this particular tract of land or just on the adjoining tract of land?

A. Well it was supposed to be on the Widow Bradley tract of land. We most all knew where the line was. The line cuts Hickory grove in two.

X Q. Well there was nothing to mark it?

A. No sir.

X Q. And that was a trapper—when you mean trapper, you mean some one catching furs,—he wasn't doing anything with the land?

A. Oh no, he wasn't doing anything with the land at all.

X Q. And how he come there you don't know anything about at all?

A. No sir.

X Q. And hunters and trappers when they wanted to, come there and go where they wanted to?

A. Yes sir.

X Q. Now George at that time—you say now this matter was called Hickory Grove farm—at that time it wasn't called Hickory Grove farm?

A. Just simply Hickory grove.

X Q. There was no farm there?

A. No sir, there wasn't a house between Hickory grove and the big mound.

X Q. And nothing to indicate who had the land?

A. No sir, there was no dwellings.

X Q. Now was that true George up until 1873?

A. I don't think there was any house on it in 1873. There might have been a small house on Hickory grove in 1873.

X Q. In 1874 was there?

A. Wouldn't say.

251 X Q. And you left there you say in '75, or were you around there?

A. Along in there some place I think there was a small house on Hickory grove. In 1874 I would fix the date.

X Q. Do you know who built it?

A. Al Breedlove was building a shanty over there. Whether he built a house or not—he put up some kind of a shanty on Hickory grove, and my idea was at the time—we used to salt cattle on there, and I think he put up a shanty there for the purpose of herders.

X Q. To keep the herders?

A. And a place for the salt. Now that I think was the first shanty I remember.

X Q. And these herders were herding all over the two or three thousand acres?

A. They only herded from the Hickory grove north to the big mound.

X Q. They didn't herd then south of the Hickory grove?

A. They couldn't get south; they couldn't hold the cattle.

X Q. Now as a matter of fact, do you know whether this Bradley land, the most of it lies south of the Hickory grove or the big mound?

A. My idea about it, the Bradley land all lies north of Hickory grove, or it takes in about half of Hickory grove.

X Q. And it takes in the north half of Hickory grove?

A. I think it does.

X Q. That is the land you have been testifying about?

A. That is my idea about it.

X Q. And south of the big mound?

A. Between the big mound and the Hickory grove.

X Q. And now George that is the land you have been testifying about and that you helped put up the fence on the east side of it?

252 A. Yes, and further south than that—we ran further south.

X Q. But the land that you speak of as the Bradley land, you have been referring to that that lies between Hickory grove and the big mound?

A. That is the piece of land I have referred to.

X Q. Now how far south of the Hickory Grove mound did you run the fence?

A. Oh I don't know—we ran past Hickory grove quite a ways, but I wouldn't say how far.

X Q. Over whose land did you run down south?

A. That was fenced off. A man by the name of Meeker—Moses Meeker.

X Q. And you ran this fence down on the east side of his?

A. Yes.

Redirect examination by Mr. CHIPERFIELD:

Q. How long Mr. Gilson since you have been back there?

A. I ain't been back there for 12 years, or 13 or 14.

Q. Do you know where the Hickory Grove farm is now?

A. Yes sir.

Q. You have seen it since it has been placed in a state of cultivation?

A. I have rode by it.

Q. And how is that farm known beside the Hickory Grove farm,—as the Bradley farm?

A. Bradley tract of land, yes.

Q. Well twelve years ago you knew where that Bradley tract of land was?

A. Ought to.

Q. Well you did?

A. Yes.

Q. There were houses on it?

253 A. Yes.

Q. And being cultivated. Now is the land which you have testified concerning the fences, and going upon, and taking care of cattle upon, the same land which was then known as the Hickory Grove farm?

A. Which is now known as the Hickory Grove farm?

Q. Yes.

A. Yes sir.

Q. So regardless of the directions which you may have made in your replies to Mr. Wallace, the land which you went upon at that time, or what you have testified to, was the land which is known as the Hickory Grove farm?

A. I believe so, yes sir.

Q. Now Mr. Wallace inquired of you if herders herded cattle over that land since 1872. I want to ask you Mr. Gilson if any one herded cattle upon that land to your knowledge since 1872 and '73 without the permission of Allison Breedlove?

A. No sir, not that I know of.

Q. Were people permitted to put cattle in there without first obtaining his permission?

A. Wasn't any put in there without Al's permission, without a dollar—no, I believe it was fifty cents a month we charged.

Q. Do you know of anyone being permitted to cut hay upon that land without Allison's permission?

A. No sir.

Q. When you speak of a trapper being upon that land, you mean just a man there temporarily?

A. Just what he could get out of it I suppose.

Q. During the fur season?

A. Just that shanty that was there. It was occupied by first one and then another.

254 Q. Do you know whether he was there with the consent of Allison Breedlove?

A. I don't think he had the consent of anybody.

Q. Do you know where Ben Prettyman lived?

A. At that time?

Q. Yes.

A. Yes, sir.

Q. Where?

A. Pekin.

Q. What direction from this land?

—. Northeast I guess you would call it.

Q. And about how far?

A. About ten or twelve mile.

Q. Do you know whether Prettyman is living or dead?

A. I know he is dead.

Q. When did he die, about?

A. Two or three—four years ago, or such a matter—I don't know just when—I know the old gentleman is dead.

Q. Did he live in Pekin at the time of his death?

A. Yes sir.

Recross examination by Mr. WALLACE:

X Q. You say it was twelve years ago, and you saw the land had been improved and houses built, and where you saw these houses was the same Bradley land that you knew before?

A. Yes.

X Q. And that was still north of the Hickory grove—included the north half of Hickory grove and extended on north?

A. That is my idea I rode by on the train,—well I went over there with a buggy too, once.

X Q. And all you can see as you ride by on the train is
255 simply the north side of the Hickory grove?

A. Yes.

Re-direct examination by Mr. CHIPERFIELD:

Q. And when you go through in a buggy what part of the land do you *corss*?

A. I didn't cross at all. I went from Hainesville down to the big mound, and there is a road over the center of the big mound, so I was still north of the Bradley land.

Q. Would the Bradley land be in plain view?

A. It would when you went up on the hillside there.

W. M. TRENT, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. B. M. CHIPERFIELD:

Q. You may state your name please?

A. W. M. Trent.

Q. Where do you reside Mr. Trent?

A. Manito, Mason county.

Q. May I inquire your age please?

A. I am 61 years old.

Q. And what is your business?

A. Well I follow the pump and windmill business for a livelihood.

Q. Where did you reside along about 1872?

A. Well sir, I lived in Mason City then.

Q. And in 1875 where did you reside?

A. I resided in Manito.

Q. Are you acquainted now with the Bradley farm known as the Hickory Grove farm?

A. Yes sir.

Q. When did you first know that tract of land?

256 A. Well in 1864 I hauled posts and lumber for Allison Breedlove out there to fence in that tract of land.

Q. Do you mean '64 or '74?

A. '64.

Q. I don't care for anything that goes back of 1872. After 1872 when did you next see or know this land?

A. Well I left the country—that neighborhood, in the spring of 1869, and didn't come back there any more until 1875, the spring of '75.

Q. Well in the spring of 1875 did you know these premises that are now the Hickory Grove farm or the Bradley farm?

A. Yes sir.

Q. Was anybody occupying these premises at that time—the land involved in this case?

A. Allison Breedlove had control of it for Mrs. Bradley was my understanding, and I got the permission of him to put some cattle on Hickory grove to pasture.

Q. How many cattle did you put in there?

A. Well I forget the number now—either eight or ten.

Q. And how long did they remain?

A. Well I couldn't say to that.

Q. Just about how long so we may get a general idea.

A. Probably three months.

Q. And did you make any settlement with Allison Broadbent for the keep of those cattle?

A. Yes sir, I paid the pasture to Mr. Broadbent.

Q. And at that time were those premises enclosed as the cattle remained on the premises?

A. Well now there was a fence on the south side where I put them in at, but whether there was any north I couldn't say.

Q. But you know there was a fence on the south side?

A. Yes sir.

Q. And as to whether the other sides were enclosed you say you don't know?

A. No, I don't know about that.

Cross-examination by Mr. Foster:

X Q. Mr. Trout, this Bradley land lay south of the big mound and ran down and took in one-half of Hickory grove?

A. Yes sir, it is south of the big mound.

X Q. Did you ever know at any time after 1877 of that part of land being enclosed by a fence?

A. Well there was a fence on the south side.

X Q. I was asking you about this being enclosed.

A. Oh, whether it was enclosed about around or not? I couldn't state.

X Q. Please state the quantity of land of that character joining it and surrounding it at that time?

A. Well on the south side of it there was some farming land. It run up to farming land but the south side of that Bradley land was very soft.

X Q. Then was the west side?

A. Well the west side was very soft.

X Q. Was there ever any fence along the west side after 1877 to your knowledge?

A. Not to my knowledge. There was a ditch there that stock couldn't cross that made the fence on the west side was my understanding.

X Q. Isn't it true that that land was pastured in common with all the other land surrounding it except as far as the fence kept it off on the east and south side except the stock off?

A. I couldn't state to that.

X Q. Don't know whether it was or not?

A. I know I drove my cattle from the salt ground on to the hills on Hickory grove.

X Q. Don't you know it was open and stock could run over it in common with the other lands on the bottom except where it was

EDWARD NAVIN, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. B. M. CHIPERFIELD:

Q. What is your full name?
A. Edward Navin.
Q. Where do you now reside?
A. In Manito, Mason county.
Q. What is your age?
A. I am about sixty years old.
Q. Do you know where the Hickory Grove farm is, or the Bradley farm, at the present time?
260 A. Yes sir.
Q. How long have you known that farm?
A. Oh I have known that land since '66.
Q. Well now commencing in 1872, did you know it at that time?
A. Yes sir.
Q. In 1872 and '73 who was occupying that land?
A. I don't think there was anybody on it,—is that what you mean?
Q. Well I will put it in this way. In 1873 you may state if you know who had charge of that land?
A. Well as far as I know, Allison Breedlove.
Q. In what capacity?
A. As the agent.
Q. As the agent for whom?
A. Mrs. Bradley.
Q. What use was Allison Breedlove in 1872 and '3 making of that land?
A. Well whoever wanted to cut hay in there, if they could get in he let them cut hay.
Q. Do you know of any hay being cut on that land in 1872?
A. Well no, I don't know that I do. I don't think I was right on the land in 1872.
Q. All right, in 1873 do you know of hay being cut on that land?
A. I believe I passed through about that time and saw some parties cutting hay with a scythe on that land.
Q. Do you know in what way they were cutting that hay?
A. Why they were cutting it with a scythe.
Q. I know, but as to from whom they obtained permission if anybody?
A. Well I don't know; I didn't ask them.
Q. Do you know whether after 1872 this land was enclosed with a fence on any of the sides now?
261 A. No sir, I don't recollect of any fence being on it at all.
Q. In '72 or 3 or 4 or along there, do you know of the land being enclosed with a fence?
A. No sir.
Q. Do you know whether it was or not?
A. No, I don't think it was.

Q. Well I asked you did you know whether it was or not?
A. Well I won't make any statement.
Q. Are you able to state?
A. No sir, I am not.
Q. Let me call your attention particularly to the east side of this tract of ground.
A. Yes sir.
Q. Do you remember ever going through a fence there?
A. I went through a fence there some time in 1870. There was a fence on the east side of the ditch, and on the west side of the ditch there had been a fence, but the fence burned away, with the exception of some posts, which stood up there.
Q. Now on the east side of the ditch would be the Bradley land would it not?
A. No sir, I think that would be the Meeker land.
Q. And on the west side would be the Bradley land?
A. Yes sir.
Q. And there was a ditch running between the two lands?
A. Yes sir.
Q. And you think this fence was on the Meeker side?
A. I think so.
Q. And that was some time in 1870, but what part of 1870 you are unable to say?
A. Well pretty near. I think in the month of June.
262 Q. But as to the land of the Bradley land, you say you don't remember whether that was enclosed or not?
A. No sir.
Q. And you can't recollect whether it was or not?
A. No, sir.

C. E. WALSH, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. B. M. CHIPERFIELD:

Q. What is your name please?
A. C. E. Walsh.
Q. Do you hold any official position in Mason county, Illinois?
A. I do, yes sir.
Q. You may state what that official position is?
A. Circuit clerk of Mason county.
Q. And *ex-officio* recorder of the county?
A. Yes sir.
Q. I will ask you to state if as circuit clerk and *ex-officio* recorder you have in your possession the land records of Mason county?
A. Yes sir.
Q. Have you a volume of the land records of Mason county with you at the present time?
A. I have.
Q. You may state what volume it is?

A. Volume G.
Q. Of what?
A. Deed records.
Q. Of the deed records of Mason county, Illinois?
A. Yes sir.
263 Q. Is that one of the books which remain of record in your office
A. Yes sir.
Q. Are you the custodian of that book?
A. Yes sir.
Q. In your official capacity?
A. Certainly.
Q. And you have and hold that book by virtue of your office as clerk and recorder?
A. Yes sir.
Q. I will ask you to turn to page 422 of that record. I will ask you if you have a deed of record in that book on page 422 and 423, purporting in the first line of the deed to be from Elijah Taylor, Jr. and Mary E. Taylor, his wife, to David Breedlove?
A. Yes, Elijah, and a character, Taylor Jr., and Mary E. Taylor, his wife.

(Mr. LACEY:) I object on the ground it is not the same book or the same conveyance.
(By the COURT:) Well I will admit it subject to further consideration now of the record.
To which ruling of the court counsel for plaintiff then and there excepted.
A copy of said record, volume G, page 422 and 423, Mason County deed records, so admitted in evidence, is annexed hereto and made part of this bill of exceptions, and is in words and figures as follows, to-wit:

No. 5754. Fled June 14th, 1855.

Alijah Taylor
to
David Breedlove. } Deed.

264 Elijah Taylor Jr. and Mary E. Taylor, his wife, of Maman county, in the State of Indiana, convey and warrant to David Breedlove, of Morgan county, in the State of Indiana, for the sum of seventeen thousand and five hundred dollars, the following real estate in the State of Illinois, to-wit:

The south half of the south-west quarter of section one; the south-east quarter of the south-east quarter of section two; and the north-west quarter of the north-west quarter of section twelve, in township twenty-three north of range six west in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty —; the south-east quarter of section fourteen, in township twenty-three

north of range six west in the district of lands subject to sale at Springfield, Illinois, containing one hundred and sixty acres; the north-west quarter of section thirty-three in township twenty-three north of range six west containing one hundred and sixty acres; the east half of the lot number one of the north-west quarter; the north-east quarter of the south-west quarter, and the west half of the south-east quarter of section one, in township twenty-three north, of range six west, containing one hundred and sixty acres; the east half of the north-east quarter, and the east half of the south-east — of section fifteen, in township twenty-three north of range six west, containing one hundred and sixty acres; the east half of the north-east quarter, and the east half of the south-east quarter of section twenty-two, township twenty-three north, range six west, containing one hundred and sixty acres; the north-east quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres; the north-west quarter of section fourteen
in township twenty-three north of range six west, containing
265 one hundred and sixty acres; the west half of the north-east quarter, and the east half of the north-west quarter of section twelve in township twenty-three north of range six west, containing one hundred and sixty acres; the south-west quarter of section twenty-three, township twenty-three north of range six west containing one hundred and sixty acres; the north-east quarter of section fourteen, township twenty-three north of range six west, containing one hundred and sixty acres; the south-east quarter of section twenty-three in township twenty-three north of range six west, containing one hundred and sixty acres; the west half of the south-east quarter of section fifeen, and the west half of the north-east quarter of section twenty-two, in township twenty-three north of range six west, containing one hundred and sixty acres; the south-west quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres; the south-east quarter of section twenty-six in township twenty-three north of range six west, containing one hundred and sixty acres; the east half of the north-east quarter, and the east half of the south-east quarter of section eleven, in township twenty-three north of range six west, containing one hundred and sixty acres; the north half of the south-west quarter, the south-west quarter of the north-west quarter, and the north-west quarter of the south-east quarter of section twelve, in township twenty-three north of range six west, containing one hundred and sixty acres; the north-east quarter of section twenty-three, in township twenty-three, north, range six west, containing one hundred and sixty acres; the south-west quarter of section fourteen in township twenty-three north of range six west, containing one
hundred and sixty acres; the west half of lot number one;
266 the east half of the lot number one of the northeast quarter, and the north-east quarter of the south-east quarter of section two, township twenty-three north of range six west, containing one hundred and sixty acres; the south quarter of the south-east quarter, and the south-east quarter of the south-west quarter of section twelve,

in township twenty-three north of range six west, containing eighty acres; all of the above described lands subject to sale at Springfield, Illinois.

In witness whereof, the said Abijah Taylor Jr. and Mary E. Taylor, his wife, have hereunto set their hands and seals this third day of November A. D. 1854.

ABIJAH TAYLOR. [SEAL.]
MARY E. TAYLOR. [SEAL.]

STATE OF INDIANA, } ss:
Morgan County, }

Before me, the undersigned, a notary public, in and for said county, this the third day of November A. D. 1854, Abijah Taylor Jr. and Mary E. Taylor, his wife, acknowledged the execution of the annexed deed.

In testimony whereof, I have hereunto set my hand and seal of office at Mimouid, this the 3rd day of November A. D. 1854.

[SEAL.] WILLIAM P. WRIGHT,
Notary Public.

Counsel for defendant introduced in evidence the deposition of John A. Whiteford, which as taken and transcribed by the notary, is in words and figures as follows, to-wit:

JOHN A. WHITEFORD, being duly sworn testified as follows, to-wit:

Direct examination by Mr. W. W. HAMMOND, counsel for defendant:

267 1. You may state your name, age, occupation and residence?

A. John A. Whiteford, Manito, forty-six years old.

2. What is your occupation?

A. Well I have not got much of an occupation now.

3. A retired farmer?

A. Yes sir.

4. How long have you lived in this neighborhood?

A. I have lived here forty-three years.

5. Where have you lived with reference to this land which is now claimed by Mrs. Bradley?

A. Why I have lived within about two miles of it part of the time, and part of the time about one mile.

6. When did you first know this land?

A. Well I have known it for, ever since I can remember, that is ever since you might say forty years.

7. When did you first know who claimed to be the owner of it?

A. Well the first I knew was Breedlove I believe claimed to own it.

8. Which one of the Breedloves?

A. I think it was Bart, the deaf one, the deaf one I think his name was Bart, Bart Breedlove.

9. Did he use it or occupy it in any way?

A. That I cannot say.

10. Then who was the next owner of it that you knew of?

A. Well Prettyman was the next.

11. Can you tell about the time you knew that Prettyman was the owner of it?

A. I think it was somewhere about 1870, along there, 1869 or 1870.

12. What was Mr. Prettyman doing with the land at that time?

268 A. Well I do not know as he was doing much of anything with it, I did see him on the south side there, I know, I think it was the Trent farm, he had a claim on that; he had a man putting out a hedge along the road.

13. Did he have a man cutting hay off from it, or ditching, or anything of that kind?

A. That I can not tell you.

14. When if ever did you learn that Mrs. Bradley claimed to own it?

Counsel for plaintiff objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. Well that was in about 1873 I think, along there 1873 or 1874.

15. Now you may tell about that?

A. Mr. Breedlove was agent, claimed to be agent for her, and there was a man by the name of Trent living on there, I do not know whether it belonged to that part or not at that time; anyway this man Trent was living on there, we took some cattle and drove them there to paster, and Trent claimed to have it rented of Breedlove.

16. Whice Breedlove was that?

A. That was Allison Breedlove.

17. Did Allison Breedlove claim to own the land himself?

A. No sir, I believe he was an agent of Mrs. Bradley.

18. You say that was in 1873?

A. Yes or 1874 that we took the cattle there.

19. From that time on you may state who exercised any act of ownership over that ground if you know?

269 A. Allison Breedlove, as he said here as long as he had control of it he was acting for Mrs. Bradley as agent.

20. What kind of acts of ownership did Mr. Breedlove exercise over the land?

A. Well he seemed to, he was taking charge of it, he did the renting of it.

21. What if anything was it rented for?

A. Well he had entered into an agreement with this here man Trent, for taking in cattle for pasturage there.

22. Did you see any hay being cut on the land?

A. Well I saw some hay being cut there, but I do not know who cut it or anything.

23. Did you know Mr. Prettyman?

A. Yes sir.

24. Now from the time you mentioned in 1873 or 1874, when you saw Mr. Breedlove commence to look after the land as Mrs. Bradley's agent, did Mr. Prettyman ever claim to be the owner, or exercise any acts of ownership over the property as far as you know?

A. No, not as I know of.

25. How long had you known Mr. Breedlove?

A. Oh, I have known him for thirty-five or forty years as near as I can remember.

26. Did you ever have any talk with him about the land?

A. No, I did not.

27. Do you know anything about a survey having been made of this land?

A. Well yes there was a commission survey that was put through here by Allison Breedlove, he had it surveyed in regard to the line on the west of that section.

28. Now do you know about when it was that was done?

270 A. I think in 1875 or 1876, something like that, I do not remember, I can not remember.

29. Was there anything in connection with that survey that called your attention to it in particular?

A. Well, this land belonged to my mother-in-law at that time, I heard her talking about it, she said they had come over on her and took her land, about five rods I think on the northeast corner of hers, had taken it away from her. It seemed like there was one Government monument there that had got lost, and this new commission survey came over on her and took about five rods of land on the north-east corner.

30. Then that made the line of this Bradley land further west?

A. Yes, further west.

31. What land was owned by your mother-in-law?

A. The north-east of section twenty-seven.

Cross examined by Mr. WALLACE, counsel for plaintiff:

1. What are the numbers of the land in controversy?

A. What are the numbers?

2. Yes.

A. Why twenty-six, twenty-five, twenty-four, somewhere along there, I can not tell you the numbers, I know it is twenty-five and twenty-four.

(COUNSEL FOR DEFENDANT:) There is an atlas down there.

A. I cannot tell exactly.

3. (COUNSEL FOR PLAINTIFF:) If you do not know I do not want you to answer.

A. It is twenty-five, twenty-four, twenty-six, part of that, twenty-six I think it is.

4. You say that Mr. Trent made arrangements with Mr. Breedlove to take in cattle?

271 A. That is what he told me, both of them, yes.

5. That is what I wanted to get at, how do you know it?

A. Why by what they both said in regard to it.

6. Was it then from what Trent or Breedlove told you that you know?

A. Yes.

7. From nothing that you know of your own personal knowledge?

A. No sir, only from what he said, and Mr. Trent said that he had rented and made arrangements with Mr. Breedlove.

8. I do not care for that.

(COUNSEL FOR DEFENDANT:) Just let it go right in, you can object to it, if you want to Mr. Wallace.

9. What year was that that you saw them, Mr. Breedlove cutting some hay there, do you remember?

A. I think about 1875, along there, 1875 or 1876.

10. What was the character of the land?

A. What was the character of the land?

11. Yes.

A. The character was pretty wet.

12. Was there any other land adjoining of the same character?

A. Yes, we had some, and Meeker had some adjoining it, we had some adjoining that.

13. Was it what you would call swamp or overflow land?

A. Swamp land.

14. About how many hundred or thousand acres were there that would be swamp land, this land in controversy and the other swamp land situated here?

A. That I can not tell you.

15. Give it approximately.

A. With this land in controversy?

272 16. This land in controversy and the other swamp land, about how many hundred or thousand of acres is there in a body, swamp land?

A. It must have been, if you run it clear to Mackinaw, you would run into over a thsusand acres.

17. On what part of the land in controversy did you see the hay?

A. Well that would be on section twenty-six.

18. Section twenty-six?

A. Yes.

19. Do you remember who commenced proceeding with the commission for that survey?

A. Mr. Breedlove was the one that had it done, I suppose he was authorized from Mrs. Bradley.

20. Was it a commission or survey where the commissioners were appointed by the court?

A. I think it was.

21. Do you remember whether that was a county proceeding that was commenced?

A. I do not.

22. That was in 1875 or 1876, that commission was it?

A. Somewhere along there I think it was, I am not positive about that.

23. Do you remember who the surveyors were that made the survey?

A. I do not, I think King was one of Pekin.

24. Were people in the habit of going down there in the swamp to make hay when it was dry enough?

A. Oh yes there was considerable grass cut there yes, what time do you mean?

25. I mean when you first knew the land up to the time it was drained?

273 A. Yes, I know Mr. Coddington cut hay there that year.

26. Did other farmers around cut hay down there?

A. Why I do not know but what they did, I cannot say as to that who all were there, I saw them working there.

27. How much of the land in controversy was hay made upon?

A. Well sir, that I cannot tell you.

28. Upon what part of it was it made generally, which side I mean?

A. Well I think the south part, the north was not grassed over much.

29. Did the land that you speak of that you have reference to lay in one body, square body?

A. Yes.

30. Was there any made up next to the Tazewell county line do you know?

A. Yes, I think there was. Yes.

31. Immediately north of the south tract?

A. Yes there was some made on the north part of it, there was some made, yes.

32. Who owned the tract east of the Bradley tract?

A. Meeker owned the greater part of it.

33. Who owned it when you first knew it?

A. Well Meeker.

34. Who owned south?

A. The south part?

35. Yes.

A. Well there was when I first knew it old man Hod Ganson.

36. Who owns it now?

A. South?

37. Yes.

A. Mr. Ganson owns some of it, and Mrs. Mr. Ganson now, and Hen Dix owns south of it, and Baker owns the south part.

274 38. And on the west?

A. On the west of that?

39. Yes.

A. There is Meeker, Whiteford heirs, Latham and I guess Pollard owns some.

40. And on the north, who owned at that time an interest there?

A. I cannot tell you.

Witness dismissed.

JOHN A. WHITEFORD.

Counsel for defendant introduced in evidence the deposition of Joseph Breedlove, which as taken and transcribed by the notary is in words and figures as follows, to-wit:

JOSEPH BREEDLOVE, being duly sworn, testified as follows, to-wit:

Examined in chief by Mr. W. W. HAMMOND, counsel for defendant:

1. What is your name, age, occupation and place of residence?

A. Joseph Breedlove.

2. Your age?

A. Forty-one years old.

3. Occupation?

A. Working by the day.

4. Residence?

A. Manito.

5. How long have you lived in this vicinity?

A. You might say all my life.

6. Who was your father?

A. Allison Breedlove.

7. Did you live with him when you were young?

275 A. Yes.

8. Do you know the Lidia Bradley land six hundred and eighty acres at Hickory grove?

A. Yes.

9. How far did you live from there?

A. About two miles and three quarters.

10. Do you know Mrs. Bradley?

A. Yes.

11. When did you see Mrs. Bradley?

A. I think about 1872.

12. Where?

A. At father's house.

13. Do you know what she came there for?

A. She came down to look at her land.

14. Did she go to look at it at that time?

A. Yes.

15. What if any business did she transact in regard to the land that day if you know?

A. Well I cannot state that, I do not know, she was to see about her rents, I do not know what transpired.

16. You did not go with her to look at the land?

A. No sir.

17. From and after that time what if anything did your father do with reference to the land?

A. He was her agent for this land.

18. In the capacity of agent for the land what did he do with the land, how did he make use of it if in any way?

A. I think he rented some of it for pasture, and some of it to mow.

19. How long did he continue to do so?

276 A. I can not just state that, three or four years any way.

20. Up to the time he went away?

A. I cannot tell you about that, I know it was three or four years any way that he did that.

Cross-examined by WALLACE, counsel for plaintiff:

1. What part did he rent for pasture?

A. I cannot just state what part he rented for pasture, I know he rented part for pasture and part to mow.

2. Will you tell what part he mowed?

A. I cannot tell that either.

3. Then you do not know of your own personal knowledge do you when you say he was agent for the land?

A. I know he was agent for it, he received rent and paid Mrs. Bradley rent.

4. That is about all you know about it is it?

A. Yes sir.

Witness dismissed.

JOSEPH BREEDLOVE.

Counsel for defendant introduced in evidence the deposition of R. A. Whiteford, which as taken and transcribed by the notary, is in words and figures as follows, to wit:

R. A. WHITEFORD, being duly sworn testified as follows, to wit:

Examined in chief by Mr. W. W. HAMMOND, counsel for defendant:

1. What is your name?

A. R. A. Whiteford.

2. How old are you?

A. I am fifty-six.

277 3. How long have you lived in this neighborhood?

A. Oh, I have been here about forty-two years.

4. Do you know the Bradley land, Hickory Grove farm?
A. Yes, I believe I do.
5. How long have you known this land?
A. Well that length of time, forty-two years.
6. How near have you lived to this land during that time?
A. I was about a mile and a quarter I guess from the land
7. Who was the first one that claimed ownership to this land in your recollection?
A. Well it seems to me at one time Allison Breedlove and Prettyman, gracious I never kept track of the owners, I think it was Breedlove.
8. Did they claim to own it?
A. Yes.
9. Did you know Mr. Breedlove when he claimed to own it?
A. Yes sir.
10. When did you first learn that Mrs. Bradley claimed to own that land?
A. I cannot state what year it was that, *that* she came in possession of that.
11. Well state what time it was as near as you can recollect?
A. Oh, I do not know as I could tell within—it must have been twenty, oh, I suppose twenty-five years, I do not know, it might be several years off.
12. Now what acts of ownership if any did she exercise over the land that gave you to understand she was claiming it?
A. Why she had Mr Breedlove as an agent here, also Mr. Hitchcock, both were looking after her land.
13. How many years do you think Mr. Breedlove looked after that?
278 A. I do not know. I believe three or four years, something like that probably.
14. What did Breedlove do with the land?
A. Why he had, I did not see anything, I think he received some rent for pasture, something like that. I think the time Mr. Hitchcock had it they cut some hay on it, it was not much account before they ditched it for anything.
15. Now how do you know when Mr. Prettyman ceased to be the owner and Mrs. Bradley commenced?

(COUNSEL FOR PLAINTIFF:) I object to the question as leading and suggestive.
(COUNSEL FOR DEFENDANT:) Question withdrawn, I will ask another question.

16. What if anything occurred to advise you of the change of ownership or claim of ownership from Mr. Prettyman to Mrs. Bradley?

Counsel for plaintiff objected to the question as leading and suggestive, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. Why Mrs. Bradley had the land appraised by a party and I was one of them, and Mr. Perkins, I do not know who the other was, there was three of us that went out there and appraised the land, afterwards we was called in the court at Havana, when I was down there and it seems that she had taken possession of the land then.

17. Can you fix that time?

A. Heh?

18. Can you fix the date of that?

A. No I can not fix the date of it at all.

279 19. Did you testify in Havana at that time?

A. Yes sir.

20. In open court, or by deposition?

A. No, in open court,——

21. Was there something more you were going to say?

A. Mr. Foster was her attorney at that time, George Foster.

Cross-examined by counsel for plaintiff, Mr. WALLACE:

1. Was it at the time that there was a trial in the circuit court in reference to this land that you speak of that you testify about?

A. No it was just a suit, it was not before the judge at all, I know that.

2. Before the master in chancery?

A. Before the master in chancery.

3. I guess you are right about that. Your testimony was taken as to the value of the land before the master in chancery of Mason county was it?

A. Yes sir.

4. That was taken for the purpose of being used in a suit that was pending in the circuit court of Mason county?

A. Yes.

5. That was why Mrs. Bradley had you go out and look to see what that land was worth, so you could testify in the suit to the value of land was it not?

A. Yes sir.

6. Do you remember who the suit was against or with?

A. No, I do not believe I have any recollection.

7. Do you remember whether or not it was with reference to a foreclasure of a mortgage or trust deed that Mrs. Bradley held against the land, and with Prettyman and McCune and some other parties?

280 A. I can not state in regard to that.

8. Do you remember what attorneys were in the suit, who represented Mrs. Bradley, and who represented the other side?

A. Why George Foster was attending to her business.

9. And for the other side Mr. Prettyman?

A. Yes Mr. Prettyman.

10. Now can you or not fix about the date?

A. No I can not.

11. Do you remember of the land afterwards being advertised and sold by the master in chancery?

A. I think it was, but I will not be positive in regard to it.

12. Do you remember when the sale was made by the master in chancery of Mason county?

A. No, I do not know.

13. I will ask you if you remember that was not in the fall, summer and fall of 1878, the spring or summer of 1879 you testified?

A. I think it was along somewhere about that time, 1870 something, I never taxed my mind or anything.

14. Did Mrs. Bradley ask you to look over the land or some of her agents?

A. Well I guess some of her agents, it seems like Mr. Foster was down here, and Mr. Perkins was with him; they requested me to meet them, that was when I went out and went over the land.

15. Had you ever been over the land before to take notice of it?

A. Not much, I used to hunt ducks over it but not for a good while.

16. Prior to that time, and at that time was that land lying out there in the common?

A. Yes there was some portion of it that had been fenced in for pasture, I do not know how much of it.

17. You do not know when it was fenced?

281 A. No, I do not know when it was fenced, no.

18. Who had the fence made?

A. I cannot say who had the fence put up, I am under the impression Mrs. Bradley.

19. The present fence?

A. Yes.

20. I am not talking of that, I am talking of the old fence.

A. If there was any fence that was not put up by her, I do not know of any fence before she came in possession of it, I do not recollect any fence.

21. You cannot tell when she had it fenced?

A. No I cannot tell.

22. When was the ditch, drainage ditch built, do you remember that, do you not remember that?

A. No sir—the dredge boat, why yes, this was dredged—let us see, that had been, I guess about five or six years since that dredge boat was in there.

Re-examination by Mr. W. W. HAMMOND, counsel for defendant:

1. Were you present at any time that Mrs. Bradley, and Allison Breedlove visited this land?

A. Yes I was there hunting when I saw them come in there, and I went over where they were.

2. Can you fix that time?

A. No I cannot.

3. You may state whether or not that was the beginning?

A. That was I think the beginning of Mr. Breedlove taking charge of the land.

4. What part of the land did they go on at that time?

A. They landed over on the east side and came across
282 Meeker's to the swamp land, she did not go out many rods on the swamp.

5. Do you remember anything that was said or done?

A. Well she made some remark about Mr. Prettyman, I do not know just what they were any more hardly, I know she gave him kinder a back seat.

(COUNSEL FOR PLAINTIFF:) Did she have a mortgage on the land?

A. I do not know that she—whether she had any mortgage or anything.

(COUNSEL FOR PLAINTIFF:) You did not know that at that time, you do not know whether she claimed she leased it of others or had a mortgage on it, or how she claimed it?

A. Well I suppose she must have had some claim on it.

(COUNSEL FOR PLAINTIFF:) Did she say anything about what her claim was?

A. No, she did not before me.

R. A. WHITEFORD.

Counsel for defendant introduced in evidence the deposition of John H. Isenberg, which as taken and transcribed by the notary, is in words and figures as follows, to wit:

JOHN H. ISENBERG, being duly sworn testified as follows, to wit:

Examined in chief by counsel for defendant, W. W. HAMMOND, Esq.:

1. Where do you live Mr. Isenberg?

A. About a mile and a half south of town here, south-east.

2. What is your age?

A. I will be thirty-seven in January.

3. How long have you lived in this neighborhood?

283 A. Well we have lived in this neighborhood about twenty-five or twenty-six years, something like that.

4. Along about 1874, where were you living?

A. Down on what is known as the Whitehead farm east of town.

5. Where does that land lie with reference to Mrs. Bradley's land east of town?

A. Well that joined our land partially.

6. On what corner?

A. On the east.

7. Joined her on the east side of her land?

A. No on the west. On the east side Mrs. Whitehead had an eighty, that eighty joined there.

8. I will ask you if you knew Allison Breedlove at that time?
A. Yes.
10. Did you ever meet Mr. Breedlove on the land there or have any dealings with him?
A. Yes sir.
11. You may state what occurred?
A. Well when I first knew anything about Mr. Breedlove there in connection with the work, we went out my brother and I to cut some hay.
12. On what land?
A. On what I had always known as the Lydia Bradley land, after we had cut the hay and taken it off the ground, it was so wet we could not get in with a team, and we carried it on to some high ground: Mr. Breedlove came and saw the hay cut I presume, saw the stacks, and he came up to our place came over to the house and he wanted to know who cut that hay, I told him I and my brother cut it, he wanted to know how much we thought we cut out there, he said he had been authorized to get one dollar and twenty-
284 five cents for all hay cut, and he had come over for his rent.
13. Who did he claim he represented, if any one?
A. He claimed to represent Lydia Bradley, he was acting as her agent when he came to us.

Cross examined by Mr. WALLACE, counsel for plaintiff:

1. About what year was it that you and your brother cut hay on that land?
A. I was there in 1874 or 1875, I would not like to say just positive which year, either the first season we was on the place or the second, if I am not mistaken the year we moved there in the spring of 1874.
2. It was after you had got the hay moved off that Breedlove came to you?
A. He came down there yes.
6. Was that the first time you saw Mr. Breedlove?
A. To my recollection I had seen him, known him all my life I had seen him around, I saw him in there many times, that was the first time I knew he was acting as agent for anybody in there.
7. That was the first you knew any one acting as agent for the land?
A. Yes, in fact he was the only man we ever dealt with while we lived there, as agent in there.
8. He came to your house and claimed you cut hay on that that he represented?
A. Yes.
9. And then he wanted some pay for it?
A. He wanted pay for the ground that we had cut.
10. About how many acres did you cut over?
A. Well I do not know, I would not like to say it has been a long time.

285 11. Oh, well about how long?

A. I do not know, I will tell you the way we settled it that you fellows can get at it, he calculated it would make about a ton to the acre, and we had taken out, if I am not mistaken it was twelve ton that we sold, he calculated it would make about a ton to the acre, that is the way we settled it.

12. It would be about twelve acres?

A. Yes that would be about twelve acres.

13. You cut hay before you made any arrangements with anyone to cut it?

A. Yes sir.

14. How old do you say you are?

A. I will be thirty-seven in January.

15. That land lay out there on the common did it so you could go on it when you cut the hay?

A. Well right in that place where we cut the hay, it was joined on the east side by the place we farmed, just over the ditch.

16. Did the ditch separate the land you farmed from the land you cut the hay on?

A. A ditch always run down there a little out from east line of the farm, it was an old ditch that always had been through there, but some of the land was fenced and some of it was not. I guess it was standing about so high some of the fence. (Indicating.)

17. Was it so anybody could go on it then?

A. No without coming through our place, that was the only way to get in the place.

18. What part of the land did you cut hay on?

A. Well this piece of land that joins on to the east side of the north eighty of the Whitehead land, that is as near as I can tell
286 you now, I do not know how to describe it as the land lays there now but take it in sections.

19. Did you cut any hay on the north side of where the public road is now?

A. There at Hickory grove?

20. Yes through this tract of land?

A. No sir it was——

21. A quarter of a mile south?

A. Yes, between a quarter and a half a mile south.

22. Where you cut?

A. Yes.

—. ——.

A. Yes on the west side of the swamp land, that part we carried out on poles, a team could not go in far after it.

JOHN H. ISENBERG.

I, James A. Philbrick, a notary public, within and for the county of Peoria, and State of Illinois, do hereby certify, that previous to the commencement of the examination of the said Phineas Coddington, John A. Whiteford, Joseph Breedlove, R. A. Whiteford and John H. Isenberg, as witnesses in the said suit between the said W. H.

Lightcap, plaintiff, and the said Lydia Bradley defendant, they were duly sworn by me to testify the truth in relation to the matters in controversy between the said W. H. Lightcap plaintiff, and the said Lydia Bradley defendant, so far as they should be interrogated concerning the same, that the said depositions were taken at the Peoples Bank of Manito, in the village of Manito, in the county of Mason and State of Illinois, on Thursday the 13th day of December A. D. 1900, commencing at ten o'clock in the forenoon of said day in pursuance of the stipulation hereto annexed.

I do further certify that said depositions were taken by me in shorthand by an agreement between the parties, and after being taken as aforesaid, they were written out by me in full, the
287 names of the witnesses to their depositions being signed by me in accordance with the stipulation annexed.

Witness my hand and notarial seal this 10th day of December, A. D. 1900.

[SEAL.]

JAMES A. PHILBRICK,
Notary Public, Peoria County, Illinois.

AUSTIN JOHNSON, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. CHIPERFIELD:

Q. You may state your name if you please.
A. My name is Austin F. Johnson.
Q. Where do you reside Mr. Johnson?
A. Peoria, Illinois.
Q. And your age?
A. 55 years old the first day of January.
Q. What is your present occupation?
A. I am in the insurance business.
Q. I will ask you to state Mr. Johnson if at any time you have been the business agent of Mrs. Lydia Bradley?
A. I was her business agent for about ten years.
Q. About what time did your connection with her affairs of that nature commence?
A. First of July 1870, and terminated in 1880, the early part of 1880; I don't remember the date exactly.
Q. Did you know Absalom McCune?
A. I did not.
Q. Did you ever see him?
A. Never saw him.
Q. Do you know of Mrs. Bradley having any notes and mortgages executed by Absalom McCune?
288 A. She had a mortgage, or a trust deed rather, securing three notes of five thousand dollars each drawing ten per cent. semi-annual interest.
Q. How were those notes secured?

A. They were secured by a deed of trust on 680 acres of land, Mason county.

Q. Is that the land in controversy in this case?

A. Yes sir.

Q. I will ask you to state if after the execution of that note and mortgage or trust deed—those notes and the trust deed or mortgage—if you ever was able to see Absalom McCune?

A. Never saw him.

Q. Was you as her business agent able at any time after that to get into communication with Absalom McCune?

A. Never was.

Q. Did you attempt to communicate with him?

A. I tried to get into communication with him through the post-office by means of letters.

Q. Through the United States mail?

A. Through the mail.

Q. And where did you address those letters?

A. I addressed them to Pekin I think.

Q. Do you know whether any of those letters were received by him or not?

A. I do not. I think one or two of them were returned.

Q. Did you ever receive any response through the mails from Absalom McCune?

A. Never did.

Q. Did you make any search or hunt for him?

A. Made inquiries for him.

289 Q. Was you ever able to locate any such a man?

A. Never was able to find out his whereabouts at all.

Q. Now did you ever see the lands which were mentioned in this trust deed or mortgage?

A. Yes sir, I did.

Q. When first?

A. I went down in 1871 first, sometime along the first part of the summer; I couldn't give the date.

Q. Did you go upon the lands in controversy upon that occasion?

A. I think I went down to Manito at that time and met Mr. Coddington, and he took me over to the mound.

Q. Well did you go upon the land in controversy at that time?

A. Yes, we crossed part of it, or what I supposed was that land.

Q. Was any one occupying this land at that time?

A. No one was in possession of it especially that I know of.

Q. Well did you see any evidence that any one was in possession of it at that time?

A. No sir.

Q. Was McCune in possession of it?

A. No sir.

Q. Was Prettyman in the visible possession of it?

A. No sir.

Q. At that time this land lying in the open?

A. In the open commons.

Q. Did you make any subsequent visits to this land?

A. I was down in September 1872 I think with Mrs. Bradley.

Q. You have heard some of the other witnesses while you have been in the court-room, speak of a visit of Mrs. Bradley to that land?

A. Yes sir.

290 Q. Was it upon that occasion you were down there?

A. No sir, it was not.

Q. Prior to or subsequent to that occasion?

A. Well that I don't know. I went down with her in September or October rather, in 1872. I said September before, but it was October.

Q. Now did you and Mrs. Bradley upon that occasion go on to this land?

A. We went down to Hainesville, and there was a conveyance come over for us from the mound, and we went over the land together and over to the mound.

Q. Do you know for what purpose Mrs. Bradley went there on that occasion?

A. We went down to look after the ground, and to get somebody to look after the ground for her interests.

Q. Do you know whether Mrs. Bradley had taken possession of the ground prior to that time?

A. I don't think she had prior to that.

Q. Well you may state whether she took any possession of the ground upon that occasion?

Counsel for plaintiff objected to the question as calling for a conclusion.

Q. What did she do on that occasion—let us find out that way?

A. Well went down there and met Mr. Coddington, that lived on the mound at that time—went down for the purpose of looking over the ground and getting the lay of the land, and see what could be done about finding somebody to take charge of it for her and look after her interests there, and take possession and collect the rents.

Q. You say she went to take possession of it?

A. Take possession of it and collect the rents.

291 Q. In 1872?

A. 1872.

Q. Now did she obtain at that time any one to take the charge of the land and property there?

A. My recollection is that she made arrangements with Mr. Coddington at that time to look after that property.

Q. With Mr. Coddington?

A. Yes sir.

Q. Are you quite sure whether that was Mr. Coddington or Mr. Breedlove?

A. I think it was Mr. Coddington.

Q. Quite sure about that?

A. Pretty certain about it; may be mistaken about it; it is a good while ago.

Q. Do you know who followed Mr. Coddington in the possession of that land?

A. I understood Allison Breedlove followed him.

Q. Haven't you just got them turned around. Well let us fix it this way—did this lady—let me ask you this question—did this lady make the arrangement with the person at that time whom you speak of, no matter what his name was, who then went into the possession of the land?

A. Why she said, now you look after this land; I am owner of the property, or it belongs to me; I want possession of it; I want you to look after this land and collect for pasturage if anybody feeds their cattle here, to collect for hay if anybody wants it, and look after my interests.

Q. Let me ask you this, if it is true that Mr. Coddington did not come into possession until 1880 some time of this land, was it Mr. Coddington with whom she made this arrangement?

292 A. Well I think Mr. Coddington was living in the old house on the mound the first time I went down there in 1871. He may have moved off subsequently for all I know, but I think he was there then.

Q. Well answer the question please which I asked you before, if it is true that Mr. Coddington did not go into possession of any of this land until 1880, was it Mr. Coddington with whom she made this arrangement? You have just got the time of those men twisted that is all.

A. It may be. I know I went down there in 1871 alone first, and I know I was met by who I thought was Mr. Coddington; came over from the mound and met me on that occasion.

Q. But in 1872 at the time—well you say you was her business agent and manager?

A. I was her business agent at that time, yes.

Q. Now did the party, whoever it was, she made the arrangements with, conduct the business through you thereafter?

A. I think he did, yes.

Q. And whether his name was Breedlove or Coddington, that party whoever he was went into possession?

A. Whoever it was we did the business with after that time.

Q. And how long did that party, whoever it may have been, continue to transact the business for Mrs. Bradley?

A. Well he looked after the property down there for some little time.

Q. Well about how long Mr. Johnson?

A. I think two or three years or so.

Q. Well do you remember receiving money from this agent of Mrs. Bradley's from time to time for several years subsequent?

A. We received money in small amounts for the collection of hay that had been sold off of the ground there.

293 Q. Did this gentleman, whoever it was, come up to Peoria occasionally?

A. He did, come up often.

Q. Now with your attention called to that fact, I will ask you to state whether you are able to say as to whether it was Coddington or Breedlove?

A. It was Allison Breedlove.

Q. It was Allison Breedlove you say?

A. It was Allison Breedlove.

Q. Mr. Coddington did not go into possession until afterwards—afterwards isn't it true that Mr. Breedlove rented this whole tract to Coddington?

A. Allison Breedlove was acting down there for her in the capacity of an agent, looking after the property for her for some time.

Q. And after that Mr. Coddington?

A. After that—well I left Mrs. Bradley's employ in 1880, I don't know.

Q. But what do you say now in answer to the question which I addressed to you before as to who it was that she made this arrangement there in October 1872, Breedlove or Coddington?

A. Allison Breedlove.

Q. Did you know Mr. Ben Prettyman in his lifetime?

A. I never had any personal acquaintance with him. I knew him by sight only.

Q. Did you ever have aby talk with him with reference to this land?

A. Never had a word with him in my life.

Q. What do you know Mr. Johnson about Mrs. Bradley, subsequent to 1872, paying the taxes and other assessments on this land up to 1880, when you left her employ?

294 A. We cleaned up all the arrears on taxes there and paid the redemption from tax sales.

Q. Do you remember when that was?

A. That was in 1871 I think.

Q. And after that what did she do with reference to the taxes?

A. She kept the taxes up every year after that.

Q. And during the length of time you were her business manager, were there any drainage assessments on this land?

A. I think there were.

Q. Did you after 1872 have occasion to visit this land?

A. I visited the land some time in the summer of '94, to make a sale under that McCune deed of trust.

Q. '94?

A. '94.

Q. Now if there were any drainage assessments on this land during the time you were her business agent, did you for her take care of them?

A. We paid them from Peoria.

Q. Do you know of Mrs. Bradley spending money on this land during the time you were her business manager?

A. She was spending some money there getting the farm improved.

Q. During what years?

A. Well I couldn't recollect exactly. It was subsequent to 1872. There were two Peoria men went down there to take charge of the land and farm it some time later; I couldn't exactly tell the year now.

Q. Was she spending money on this land until the time that you ceased to represent her?

A. Yes sir.

Q. Do you remember what amount was required to redeem this land from the taxes in 1871?

295 A. I couldn't tell now or recollect without seeing the tax receipts. It was something over a hundred dollars I think, the first redemption.

Q. Well as the manager of Mrs. Bradley's property did you also look after this property from 1872 until the time that you ceased her employ?

A. Yes sir.

Q. As the business manager of Mrs. Bradley did you receive at the time you paid the taxes on these premises, various receipts?

A. We received receipts from Mason county, from Havana.

Q. I will ask you to look at Exhibits 31, 32, 33, 34, 35, 36, 38, 39, Exhibit 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and ask you if all of those, with the exception of Exhibit 19, are receipts for taxes or special assessments?

Counsel for plaintiff objected to the question, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) They ought to show for themselves what they are.

Q. I wish simply to ask him if there were receipts for taxes or special assessments, paid upon the premises, which were paid for him?

A. The first taxes I paid there was May 21, 1871, for redemption.

Q. Will you kindly state the exhibit please?

A. Exhibit Number 2.

Q. Now go on and follow that up.

A. Exhibit Number Three, Exhibit Number 4, Exhibit Number 5, Exhibit Number 6, Exhibit Number 7, Exhibit Number 8, Exhibit Number 9, Exhibit Number 10, Exhibit Number 11,

296 Exhibit Number 12, Exhibit Number 13; that included taxes up to 1879. That looks like the receipts from Mason county for that land. There is more land in there than the 680 acres.

Q. But are these receipts which came to your hands for the payment of taxes upon the property in controversy?
A. I think they are.

(Mr. CHIPERFIELD:) Now we offer so far as the same affect or concern this land, Exhibits 2 to 13.
(Mr. WALLACE:) Well there is nothing here to show that these taxes or tax receipts were given by the collector of Mason county.
(By the COURT:) Oh they are not introduced to show title, they are merely introduced to show, whatever it is worth, that she paid out that money on this land for the purposes indicated there probably.
(By Mr. CHIPERFIELD:) The only purpose is to show her acts in connection with the land.
(By the COURT:) I understand Mr. Johnson assumes to know these amounts were paid on that land for the purposes mentioned on the receipt.

(Mr. WALLACE:)

Q. Do you have any particular recollection except what you see from the receipt?
A. These look like the receipts.

(By the COURT:) Well they go in subject to objection. To which ruling of the court counsel for plaintiff then and there excepted.
A copy of said tax receipts, marked Defendant's Exhibits 2 to 13, is attached hereto and made a part of this bill of exceptions, and are in words and figures as follows, to-wit:

297 STATE OF ILLINOIS, }
Mason County. }

County clerk's office.

HAVANA, *May 24th*, 1871.

I, Isaac N. Mitchell, clerk of the county court of said county do hereby certify that Lydia Bradley, has this day paid me one hundred and fifty-one dollars and thirty-nine cts., being the redemption money for the following described real estate, which was sold on the 28th day of June 1869, for the taxes due said county and State, for the years 1868, together with costs, and being double the amount for which said estate was sold.

Acres.	Description.	Sec.	Town.	Range.	To whom sold.
80	N. ½ N. E. ¼	22	23	6	A. Krebaum.
40	S. W. ¼ "	"	"	"	Same
40	S. E. ¼ "	"	"	"	Same
40	N. E. ¼ S. E. ¼	"	"	"	Same
160	S. W. ¼	23	"	"	Same

Amount sale.	Redemption.	Tax of 1869.	Tax 1870. Total tax.	
757	1514	906	798	32 18
422	844	457	416	17 17
421	842	456	416	17 14
1265	2530	493	399	34 22
1432	2864	906	798	45 68
Printer's fees	2.50 Clerk fees	2.50.....	....	5
				$151.39

[SEAL.] ISAAC N. MITCHELL,
County Clerk.

Ex. "2"

298 STATE OF ILLINOIS, }
Mason County. }

County clerk's office.

HAVANA, *May* 24, 1871.

I, Isaac N. Mitchell, clerk of the county court of said county, do hereby certify that Lydia Bradley has this day paid me one hundred and twenty dollars and thirteen cts., being the redemption money for the following described real estate, which was sold on the 28th day of June 1869, for the taxes due said county and State for the year 1868, together with costs, and being double the amount for which said estate was sold.

Acres.	Description.	Sec.	Town.	Range.	To whom sold.
40	N. E. S. E.....	23	23	6	A. Krebaum
40	N. W. S. E.....	"	"	"	Same
40	S. W. S. E.....	"	"	"	Same
40	S. E. "	"	"	"	Same
80	N. ½ N. E.....	26	"	"	Same
.....	" N. W.....	"	"	"	Jno. Stichtman.

Amount sale.	Redemption.	Tax of 1869 & int.	Tax of 1870.	
423	846	342	456	16.44
423	846	342	455	16.44
504	1008	342	278	16.28
423	846	609	278	17.33
533	1066	710	606	23.82
533	1066	710	606	23.82
Printer's fees	& notice 3.00	Clerk's fee 3.00.....	.	6.00
				$120.13

[SEAL.] ISAAC N. MITCHELL,
County Clerk.

Ex. "3" H. N.

299 STATE OF ILLINOIS, } ss:
Mason County, }

County clerk's office.

HAVANA, *August 20th*, 1872.

I, Isaac N. Mitchell, clerk of the county court of said county, do hereby certify that Lydia Bradley Clark has this day paid me forty-two dollars and 24 cents, being the redemption money for the following described real estate, which was sold on the 24 day of June 1872, for the taxes due said county and State, for the year 1871, together with costs, and being double the amount for which said estate was sold.

Acres.	Description.	Sec.	Town.	Range.	To whom sold.	Amount sale.	Redemption.
40	S. W. ¼ N. E. ¼	22	23	6	A. E. Roberts.	4.33	5.41
40	N. E. ¼ S. E. ¼	22	"	"	Same	4.32	5.40
160	S. W. ¼	23	"	"	Same	8.42	10.52
40	N. W. ¼ S. E. ¼	"	"	"	Same	4.49	5.61
40	S. E. ¼ "	"	"	"	Same	2.90	3.72
80	N. ½ N. E. ¼	26	"	"	Same	8.06	10.08
					Cl'k's fees		1.50
							$42.24

[SEAL.] ISAAC N. MITCHELL,
County Clerk.

EX. "4"

STATE OF ILLINOIS, }
Mason County. }

County clerk's office.

HAVANA, *July 6th*, 1872.

I, Isaac N. Mitchell, clerk of the county court of said county, do hereby certify that Lydia Bradley Clarke, has this day paid me thirty-five dollars and 83 cents, being the redemption money for the following described real estate, which was sold on the 24th day of June 1872, for the taxes due said county and State, for the year 1871, together with costs, and being double the amount for which said estate was sold.

Acres.	Description.	Sec.	Town.	Range.	To whom sold.
80	N. ½ N. E. ¼	22	23	6	A. Krehaum.
40	S. E. ¼ "	"	"	"	Same
40	N. E. ¼ S. E. ¼	23	"	"	Same
40	S. W. ¼ "	"	"		Same
80	N. ½ N. W. ¼	26			Same

Amount sale.	Redemption.	Total tax.
7.78	9.73	9.73
4.33	5.41	5.41
4.65	5.81	5.81
2.85	3.56	3.56
8.06	10.07	10.07
	Cl'k's fees	1.25
		$35.83

[SEAL.]
Ex. "5"

ISAAC N. MITCHELL,
County Clerk.

300 APR. 11", 1873.

Received of Lydia Bradley Clarke, the sum of seventy-five and 76/100 dollars, in full for State, county, and special taxes for the year 1872, on the following described property:

Description.	Sec.	Town.	Range.	No. acres.	Equalized val. by Co. board.	State tax.
S. W. N. E.	22	23	6	40	85	64
N. E. S. E.	"	"	"	40	42	
N. ½ N. E.	"	"	"	80	170	1 28
S. E. N. E.	"	"	"	40	85	64
S. W.	23	"	"	160	170	1 28
N. W. S. E.	"	"	"	80	85	64
S. E. "	"	"	"	40	42	32
N. E. "	"	"	"	80	85	64
S. W. "	"	"	"	40	42	32
N. ½ N. E	26	"	"	240	254	
N. ½ N. W.	"	"	"	240	254	

Co. tax.	Town tax.	District school tax.	District road tax.	Road & B. tax.	Railroad indebt. tax.	Total tax.
64	22	2 25	51	.....	51	5.07
						2.53
1 28	43	5 10	1 02	.....	1 02	10 13
64	22	2 55	51	.....	51	5 07
1 28	43	5 10	1 02	.....	1 02	10 13
64	22	2 55	51	.....	51	5 07
32	11	1 26	26	2 88	26	5 41
64	22	2 55	51	.....	51	5 07
32	11	1 26	26	.....	26	2 53
						12 61
						12 61
		Cost & ch'g's.....		.....	.....	3 53
						79.76

Ex. "6"

J. W. BOGGS,
Dep. Collector, Mason Co.

301 Collector's office.

$53.58. HAVANA, ILL., *Apr. 15th*, 1874.

Received of Lydia Bradley, the sum of fifty-three and 58/100 dollars in full, for State, county and special taxes, for the year 1873, on the following described property:

Description.	Sec.	Town.	Range.	No. acres.	Equ. val. by State board.	State tax.
N. ½ S. E. ¼	22	23	6	80	160	52
S. W. "	22	23	6	40	120	39
S. E. "	"	"	"	40	120	39
N. E. S. E. ¼	23	"	"	40	120	39
S. W.	"	"	"	160	480	1 56
N. E. S. E.	22	"	"	40	120	40
N. W. "	23	"	"	40	120	39
S. W. "	"	"	"	40	120	39
S. E. "	"	"	"	40	120	39
N. ½ N. E. ¼	26	"	"	80	640	2 00
" N. W.	"	"	"	80	640	2 00

Co. tax.	Town tax.	District school tax.	Special road tax.	Railroad tax.	County bond tax.	Total tax.
1 08	3	1 23	15	6	42	3 49
81	2	92	11	5	32	2 62
81	2	92	11	5	32	2 62
81	2	92	11	5	32	2 62
3 25	9	3 68	44	18	1 26	10 46
82	3	92	11	5	32	2 63
81	2	92	11	5	32	2 62
81	2	92	11	5	32	2 62
81	2	92	11	5	32	2 62
4 18	11	1 90	56	22	1 62	10 64
4 18	11	1 90	56	22	1 62	10 64
						53 58

SAM'L BIVENS, *Co. Coll.*,
Per KYLE, *Dept.*

Ex. "7"

302 HAVANA, ILL., *April 1st*, 1875.

Received of Lydia Bradley, the sum of fifty-three and 94/100 dollars, in full for State, county, and special taxes for the year 1874, on the following described property:

Description.	S.	T.	R.	No. acres.	Equa. val. by State b'd.	State.	Co. tax.
N. ½ N. E.	22	23	6	80	129	31	65
S. W. "	"	"	"	40	97	24	48
S. E. "	"	"	"	40	97	24	48
S. E. ¼	23	"	"	160	387	93	1 94
S. W. ¼	"	"	"	160	387	93	1 94
N. E. S. E.	22	"	"	40	97	24	48
N. ½ N. E.	26	"	"	80	516	1 24	2 58
N. ½ N. W.	"	"	"	80	516	1 24	2 58

Town tax.	District school tax.	District road tax.	Special R. & b'ge tax.	Sinking fund tax.	Railroad tax.	Co. bond tax.	Total tax.
13	1 29	20	18	30	6	45	3 57
10	96	15	14	20	4	34	2 65
10	96	15	14	20	4	34	2 65
39	3 87	60	54	80	16	1 36	10 59
39	3 87	60	54	80	16	1 36	10 59
10	96	15	14	20	4	34	2 65
52	1 18	80	72	1 05	21	1 81	10 12
52	1 18	80	72	1 05	21	1 81	10 12
				Costs & ex.			1 00
							53 94

SAM'L BIVENS,
Co. Collector,
Per SAM'L KYLE, *Deputy*.

Ex. "8"

303 County collector's office.

$60.25. HAVANA, ILL., *April 13th*, 1876.

Received of Lydia Bradley the sum of sixty and 23/100 dollars, in full for State, county and special taxes for the year 1875, on the following described property:

Town.	S.	T.	R.	No. acres.	Equ. val. by State b'd.	Total tax.
N. ½ N. E.	22	23	6	80	157	$3.50
S. ½ "	"	"	"	80	235	5.26
N. E. S. E.	"	"	"	40	118	2.63
S. W.	23	"	"	160	470	10.49
S. E.	"	"	"	160	470	10.49
N. ½ N. E.	26	"	"	80	630	13.93
N. ½ N. W.	"	"	"	80	630	13.93
						$60.23

SAMUEL BIVENS,
Co. Collector,
Per KYLE, *Deputy.*

Ex. "9"

Town collector's office.

JUNE 4TH, 1877.

Received of Lydia Bradley, the sum of sixty-three and 89/100 dollars, in full for State county and special taxes, for the year 1876, on the following described property:

Description.	S.	T.	R.	No. acres.	Equal'd val. by State b'd.	Costs.	Total.
N. ½ N. E. ¼	22	23	6	80	155	32	$3.95
S. ½ "	"	"	"	80	233	32	5.77
N. E. ¼ S. E. ¼	"	"	"	40	116	32	3.02
S. W. ¼	23	"	"	160	464	32	11.17
S. E. ¼	"	"	"	160	464	32	11.17
N. ½ N. W. ¼	26	"	"	80	619	32	14.03
N. ½ N. E. ¼	"	"	"			32	14.03
				Ex. &	chgs		.75
							63.89

SAMU-L BIVENS,
Co. Collector,
Per KYLE, *Deputy.*

Ex. "10"

304 Town collector's office.

APRIL 19TH, 1878.

Received of Miss L. Bradley, the sum of one hundred seventy-four and 16/100 dollars, in full for State, county and special taxes, for the year 1877, on the following described property:

Description.	S.	T.	R.	No. acres.	Equal'd val. by State b'd.	Back tax.	Total tax.
N. ½ N. E. ¼	22	23	6	80	81		2 73
S. ½ "	"	"	"	80	81		3 05
N. E. S. E. ¼	"	"	"	40	81		2 50
S. W. ¼	23	"	"	160	325		9 05
S. E. ¼	"	"	"	160	325		9 05
N. ½ N. W. ¼	26	"	"	80	438		11 80
N. ½ N. E. ¼	"	"	"	80	438		11 80
N. W. ¼	8	20	8	160	1518	46 34	73 92
N. W. S. W.	"	"	"	40	506	14 67	24 17
S. W. "	"	"	"	40	557	14 67	25 09
					Ex. & chgs.		1 00
							$174.16

SAM'L BIVENS,
Co. Collector,
Per KYLE, *Dep'ty.*

Ex. "11"

County collector's office.

$154.56. HAVANA, ILL., *April* 14, 1879.

Received of Lydia Bradley, the sum of one hundred fifty-four & 56/100 dollars, in full for State, county and special taxes for the year 1878, on the following described property:

Town.	S.	T.	R.	No. acres.	Tqual. val. by State board.	Total tax.
N. ½ N. E. ¼	22	23	6	80	100	$2 80
S. ½ "	"	"	"	80	100	2 80
N. E. S. E. ¼	"	"	"	80	100	2 80
S. W. ¼	23	"	"	160	400	11 20
S. E. ¼	"	"	"	160	400	11 20
N. ½ N. W. ¼	26	"	"	80	600	13 14
N. ½ N. E	"	"	"	80	600	13 14
N. W. ¼	8	20	8	160	1258	24 53
N. ½ S. W. ¼	"	"	"	80	915	17 86
S. W. ¼	14	22	6	160	1994	47 95
N. W. ¼ N. W. ¼	23	....	....	40	250	7 14
						$154.56

SAMU-L BIVENS,
Co. Collector,
Per KYLE, *Deputy.*

Ex. "12"

305 County collector's office.

$124.95. HAVANA, ILL., *April 3rd*, 1880.

Received of Lydia Bradley, the sum of one hundred twenty-four and 95/100 dollars, in full for State, county and special taxes for the year 1879, on the following described property:

Town.	S.	T.	R.	No. acres.	Equal. val. by State board.	Total tax.
N. E. ¼	22	23	6	160	194	$6.80
N. E. ¼ S. E. ¼	"	"	"	40	49	1 72
S. W. ¼	23	"	"	160	386	13 50
S. E. ¼	"	"	"	160	386	13 50
N. ½ N. E. ¼	26	"	"	80	483	8 45
N. ½ N. W. ¼	"	"	"	80	382	6 57
S. W. ¼	14	22	"	160	1938	59 84
N. W. N. W. ¼	23	"	6	40	242	6 53
N. W. ¼	8	20	8	160	1311	16 79
W. ½ S. W. ¼	"	"	8	80	820	10 50
			"			
						$124.20

SAM'L BIVENS,
Co. Collector,
Per KYLE, *Deputy*.

Ex. "13"

Cross-examination by Mr. WALLACE:

X Q. Mr. Johnson, what relation if any do you sustain to the defendant?

A. Mrs. Bradley?

X Q. Yes.

A. I married her niece.

X Q. And what relation if any were you to E. G. Johnson?

A. I was his son.

X Q. He was the trustee in the trust deed that you have spoken of given by McCune to him to secure $15000.—three notes to Mrs. Bradley?

A. Yes sir.

X Q. When you came in as Mrs. Bradley's business agent or manager, you found the McCune three notes and the trust deed and no interest paid upon it?

A. They were among her papers, yes, sir.

X Q. I say you found them among her papers as part of her assets?

A. Yes.

306 X Q. And you soon afterwards commenced writing letters notifying McCune?

A. We commenced hunting up McCune or prodding him up to pay that interest.

X Q. Did you write to any other post-office except Pekin?

A. I don't think I did, because I was informed that Pekin was his address.

X Q. What was the closest post-office to the lands in controversy in this suit, at that time?

A. Manito I presume.

X Q. And how far were the lands in controversy from where the post-office was at Manito?

A. I don't know by distance. The ground is a little ways back of Manito; may be more.

X Q. And what is the next nearest post-office to the lands in controversy at that time?

A. I think Hainesville.

X Q. And about how far would Hainesville be to the lands in controversy?

A. Hainesville is south of Manito, I don't know how far.

X Q. North of Manito you mean?

A. Yes, north about a mile and a half, north of Manito.

X Q. That would be within two miles of the land?

A. I think probably.

X Q. You did not write to either of those post-offices to find Mr. McCune?

A. I wrote to Pekin because I was informed Pekin was his post-office.

X Q. There was a post-office at both Hainesville and Manito at that time?

A. Yes.

307 X Q. So you think it was some of your letters were returned to you?

A. There were two I think returned. I wrote several others.

X Q. Do you remember how many you wrote?

A. Oh I wrote half a dozen or more.

X Q. Do you remember when you wrote the last one to him?

A. Some time in 1872, I couldn't give you the date.

X Q. Can you state about what time in 1872 it was that you wrote last?

A. I don't know; probably the middle of the summer somewhere.

X Q. You wrtoe to him notifying him that the interest was unpaid?

A. I notified him that the taxes were unpaid, and we would redeem them; that the interest was in arrears on the note and it was necessary for him to square up.

X Q. You wrote him that as the agent of Mrs. Bradley, and that last letter was some time after you had wrote him the land was sold for those taxes?

A. I think so.

X Q. Not having received any reply to those letters, and interest

not being paid, or taxes, did you or not as agent of Mrs. Bradley cause the land to be advertised for sale under the trust deed?

A. When,—in 1872?

X Q. Yes, in 1872.

A. Oh no.

X Q. Do you know whether or not it was advertised in 1872 by E. G. Johnson as trustee?

Counsel for defendant objected to the question as not proper cross examination, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

308 X Q. You went down to look at the land to find out the condition it was in did you?

A. In 1871.

X Q. And then you went down again in 1872?

A. I went down with Mrs. Bradley in 1872, in October, early in October.

X Q. Let me ask you, do you know of a suit being commenced for the foreclosure of the trust deed?

A. I don't think there ever was any that ever I knew of.

X Q. You don't know anything about that?

Counsel for defendant objected to the question as not proper cross examination, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

X Q. When you went down in 1872, these notes and mortgage were still in your possession or Mrs. Bradley's, that is you as her agent?

A. Yes sir.

X Q. And finding the land vacant and unoccupied, you took some steps to find some one to look after it did you?

A. Took steps to get possession of it and get what we could out of it.

X Q. Why did you take possession of it so as to make something out of it?

A. Well we found McCune had skipped the country—the man that executed the notes and deed of trust—as soon as that thing was cooked, he skipped, and the next thing was to get into possession and save ourselves if we could.

X Q. Save yourself as much as you could on the debt?

A. Save the ground and get the income from it.

309 X Q. And apply that income on the debt, to protect yourself and get something out of it if you could?

A. We went down to get possession of the ground, and get whatever income or rent we could from the property; whatever we could get out of it.

X Q. And that was for what purpose?

Counsel for defendant objected to the question as not proper cross

examination, which objection was overruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. I don't think we got $40. altogether.

X Q. I say for what purpose were you anxious to get—you say to get possession of the ground and get something out of it if you could, and what did you want to get something out of it for, what purpose?

A. To get the income from the ground, the same as we would from any other piece of property.

X Q. But why?

Counsel for defendant objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. Well I couldn't answer that now.

X Q. Well it was because you had the notes and mortgage wasn't it that were due?

Counsel for defendant objected to the question as leading, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

X Q. Wasn't it?

310 A. We kept a regular set of books of income and debit, and the amount was small, and I couldn't tell you to-day what was done with the small amount we got on the ground.

X Q. Your deposition was taken in this matter in Peoria wasn't it some time ago?

A. Yes.

X Q. Didn't you state in the deposition you took possession of it because you had the notes and mortgage there, and to protect the interests of Mrs. Bradley?

A. Yes sir, that is what we took possession for. We took possession of the property for Mrs. Bradley's interest there. McCune had left the country after cooking up that job, and we were anxious to get possession of that ground and save it for Mrs. Bradley, whatever we could get out of it—not as mortgagees exactly—I don't know—but we went to get the ground so we could improve it, and fence it, and get the rent.

X Q. Independent of the fact that you held a trust deed, or held these notes of McCune, secured by trust deed—independent of that fact had you any object in taking possession of it?

Counsel for defendant objected to the question as having already been answered, which objection was overruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. Why I don't know as I can answer it any different than I answered it before. We went down there to get that ground and get control of it. I didn't go down there because we were mortgagees especially, but because we had been held up there, and we wanted to get what we could out of the thing.

X Q. If you hadn't held these notes of McCune's, secured by trust deed upon this land, would you have gone down there to take possession of it?

311 Counsel for defendant objected to the question as argumentative, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. If we hadn't been interested in the property we wouldn't have gone down of course.

X Q. Then it was because you held these notes of McCune you went down there?

Counsel for defendant objected to the question as having been answered, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

X Q. Well in your deposition that you had taken in Peoria, did you or not testify that you and Mrs. Bradley went there to take possession of the ground because she had the notes secured by a trust deed on the ground?

Counsel for defendant objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. How was that?

X Q. In your deposition which was taken in this case, did you or not testify that the reason that you and Mrs. Bradley went there to take possession of the ground was because she held these three notes secured by trust deed upon the land?

A. Probably I did.

X Q. And that was the fact wasn't it?

Counsel for defendant objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

312 A. Why we went down there to get hold of that ground—— (By the COURT:) He has answered the question whether he testified to that twice,—what he supposed he said in the deposition. The question is asked you now—you said you testified to that in your deposition,—the question now is was that the fact what you testified to, answer that.

A. Why we went down there to get hold of that ground just as I say, in a general way to get possession of it and get the good of it, just the same as a man who has his pocket picked tries to save his handkerchief if he can.

Counsel for plaintiff objected to the answer as not responsive, and asked that it be excluded, which objection was sustained by the court and the answer stricken, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) You can answer that question yes or no, whether that was the fact or not.

A. What is that question then?

(Mr. WALLACE:)

Q. I stated to you that you testified in your deposition taken in Peoria that you and Mrs. Bradley went down there to take possession of the land in order to protect her interests as mortgagee, that is the three notes of $5000 each.

(By the COURT:) Are you reading from the deposition?

(Mr. WALLACE:) No sir.

(By the COURT:) Read as put to him in the deposition. It wasn't put that way before.

(Mr. WALLACE:)

Q. In your deposition taken at Peoria, were you asked this question, number 14, "Her title as you understood it was from this mortgage deed or trust deed,—her interest in it as owner of the notes secured by the trust deed," were you asked that question?

313 A. I couldn't recollect now.

X Q. If you were asked that question did you make answer to that question, "She was the holder of the notes under the deed of trust. We considered after McCune had run away and flown the thing, that the land was probably abandoned so far as he was concerned, and of course Mrs. Bradley thought she had a right then to take care of the land and look after it." Did you make that answer?

A. I made that answer. I did, I think; sounds like it now.

X Q. Then were you asked this question, "It was simply because she was the holder of the notes and mortgage,"—were you asked that question in that deposition?

A. I don't recollect about that.

X Q. And if you made answer to that, "It was because she was the holder of the notes and mortgage, and she supposed as a matter of course her ownership was good."

A. I don't know; I may have answered that.

(By the COURT:) He asks you, if you made that answer then as read there, which you say you probably did, was that true. You are to answer the simple question now whether if you made that answer it was true?

Counsel for defendant objected to the question, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. It was if I made that answer.

(Mr. WALLACE:)

X Q. Now Mr. Johnson, in your direct examination a few moments ago, you stated that you went down there in 1894

A. I went down there in '94, I think in July, June or July.

X Q. Down where?

314 A. Why I went down to Manito, and then I took a buggy and went over on the mound.

X Q. For what did you go to Manito in 1894?

Counsel for defendant objected to the question as not proper cross examination, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

(By the COURT:) Yes, he simply dropped a remark about the last time he was there in 1894. It wasn't followed up.

(Mr. CHIPERFIELD:) We will withdraw that part of the question and answer.

(By the COURT:) Yes, I think you have a right to do that, because I noticed it at the time. It came up to a late period.

(Mr. WALLACE:)

X Q. Is your father living or dead?

A. He is dead.

X Q. How long has he been dead?

A. He died in January 1885.

X Q. Let me ask you if at any time since your father's death, Mrs. Bradley has applied to you as her agent, or the heirs of E. G. Johnson, deceased, to advertise and sell the land given by McCune to E. G. Johnson as trustee to secure the three notes for $5000. given to Lydia Bradley?

Counsel for defendant objected to the question as not proper cross examination, which objection was sustained by the court, to which ruling of the court counsel for plaintiff then and there excepted.

Re-direct examination by Mr. CHIPERFIELD:

Q. Now did I understand you to say to the question propounded to you by Mr. Wallace that the purpose of your going down to this land in 1872 was to take possession of it generally for the

315 protection of any right Mrs. Bradley might have?

A. That is what we went down for.

(Mr. CHIPERFIELD:) I wish to read the bill offered in evidence by the plaintiff, filed in the circuit court of Mason county. We will offer this bill ourselves and read it as part of our testimony.

Whereupon counsel for defendant read to the court the bill, and affidavit of E. G. Johnson attached thereto, marked Plaintiff's Exhibit 18, and heretofore set out in this bill of exceptions and made part hereof.

Mrs. LYDIA BRADLEY, the defendant, sworn and examined on her own behalf, testified as follows:

Direct examination by Mr. HAMMOND:

Q. Mrs. Bradley you may state your name?
A. My name is Lydia Bradley.
Q. Where do you live?
A. I live in Peoria, Illinois.
Q. Are you the defendant in this case?
A. Yes sir.
Q. Were you ever acquainted with Benjamin S. Prettyman?
A. I knew of him, but never saw him but once.
Q. On what occasion?
A. He came to my house with Washington Cockrell.
Q. You say he came to your house with Mr. Cockrell?
A. Yes sir.
Q. Now what took place at that time?
A. He come there to get me to sell the land—to let Mr. McCune have it, and represented him to be a cattle man from Texas, a
316 very wealthy man, and that he wanted the land to rest and recuperate——

Counsel for plaintiff objected to the testimony as incompetent.

(By the COURT:) On what ground do you claim it is competent?

(Mr. HAMMOND:) I will state upon what grounds we claim it is competent. The controversy in this case is whether or not Mrs. Bradley's possession at the time she took it is adverse. The whole circumstances of this case go to show that her possession was immediately adverse as soon as she ascertained the fraud which had been perpetrated upon her. Now it is competent at any time after breach of condition for the mortgagee to take possession of the premises, but the possession of the mortgagee does not become adverse unless there is some act of the mortgagee which shows her adverse relation to the mortgagor. In this case we depend on all the circumstances that surround this transaction to show that Mrs. Bradley's acts were immediately adverse as soon as she discovered this fraud, and in order to show the fraud we have to show the whole transaction from the time this Breedlove mortgage was taken until this McCune mortgage was fraudulently substituted for it.

(By the COURT:) My understanding is that this matter was litigated in this proceeding in Mason county, in these papers that are offered here. I heard the statement made by counsel in the opening of the case of course, and got the drift of what was claimed. I don't believe that this testimony is competent. I think that matter is settled by the decree. If I am correct in my dates here, this bill was filed and pending at the time Mr. Johnson here says they went down there and took possession in October 1872. There are
317 certain facts and things that you could show, but I don't have any idea you have a right to show this. I may be mistaken—I can be mistaken as well as anybody, but when I think I

am not mistaken I am just as sure of it until I get my mind changed as anybody else. I don't think this proof is competent. I didn't think so when the statement was made in the opening speech. I will have to hold it is not. I don't think you can show that transaction.

Whereupon the court sustained the objection, to which ruling of the court counsel for defendant then and there excepted.

(Mr. HAMMOND:) Your honor, I desire to make my offer. We offer to prove by this witness that Mr. Prettyman made the representations in regard to the value of this land, to secure the exchange of the McCune mortgage for the Breedlove mortgage, knowing that the property was worth only about $10. or less per acre, and that Mrs. Bradley was induced to make the exchange by his representations that the land was valuable, and had been sold to Mr. McCune for $24,000. and that Mr. McCune was a responsible person. Do I understand the court to say that I am not entitled to prove these facts?

(By the COURT:) No, I think not; not by her.

To which ruling of the court counsel for defendant then and there excepted.

Q. Now Mrs. Bradley when did you first see these lands in Mason county?

A. When did I first see them?

Q. Yes.

A. Why when I went down to Allison Breedlove's in 1872.

Q. Now when you went down to Mr. Breedlove's in 1872, just tell the court what you did.

318 A. Well he met me at Green Valley—he was frequently at our house in Mr. Bradley's lifetime, and had borrowed money of Mr. Bradley.

Q. Tell these gentlemen over here.

A. He was frequently—Allison would frequently come up with Mr. Bradley from the bank to dinner, and he said he was up there, and was up there to pay some interest on some money he had borrowed of Mr. Bradley, and he said if I would come down to see the land he would meet me at Green Valley with a conveyance and take me to his house, and then we could walk down to the land, and I went. He met me at Green Valley, and we went down on to the land. I had dinner there, and went down on to the land, or on to the edge of it. Of course you couldn't go into it. It was all a swamp. If I had got off at Hainesville I could have took the road down, but I didn't, I went to Green Valley, and I could not go on the land without going back.

Q. Did you go on the land any distance at all?

A. I couldn't go on it, for Breedlove was afraid I would get mired.

Q. Well did you get mired?

A. No, I didn't go far enough on to get mired. I went a short distance and stopped.

Q. Did there anything else occur right there at that time?

A. Nothing as I know of particularly, only I employed him. I went to take possession of the land, and employed him to sell hay off of it, and I would give him half after paying the expenses. I considered it my land, because McCune——

Counsel for plaintiff objected to the answer, which objec-
319 tion was overruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

(By the COURT:) She can say what she intended, and I think what she probably thought in taking possession—what she meant by it.

Q. The court says you can go on. You say you considered the land——

A. Worthless. Judge Loucks you know it was advertised for sale——

Q. Yes.

A. And Judge Loucks went down to sell it, and when he got there he said he couldn't get on it. It was a pond of mud, and he went on around, and he adjourned the sale and come to get my advice, and I then made up my mind that I had been defeated in getting the other land back, that I would take the land and do the best I could with it, and Allison Breedlove was to take charge of it, of the hay, and give me half after paying the expenses, and I went down sometime afterwards with Austin Johnson; we got off at Hainesville and went up on the mound then and saw the land—the mound is always dry—and we took our dinner—Mrs. Beggs was with us—my niece—and we took our dinner with us, and ate dinner on the land, and there was a house on the mound—an old rattle-trap of a house. When the survey was made it proved not to be on mine, but I didn't go to the house—there was nobody I don't think living there—I didn't see anybody—I didn't see anybody on the mound at all.

Q. Now Mrs. Bradley from that time on how long did Mr. Breedlove continue to look after the land for you?

A. Well I don't know what time he moved away. He continued to look after it until he was going to move away, and then I leased it to Hitchcock.

Q. To Walker N. Hitchcock?

320 A. Yes sir.

Q. Then the date of Mr. Hitchcock's lease will show the time?

A. It will show the time.

Q. Now after Mr. Hitchcock, who leased the land if anybody?

A. Why Coddington.

Q. What was his first name,—John Coddington?

A. John Coddington.

Q. How long did he stay there?

A. Why I don't know how long he stayed there. I guess about twenty years—I don't know.

Q. Now after you had been down to see the land what did you do if anything in regard to the taxes on the land?

A. Why I redeemed them.

Q. Did you find the property had been sold for taxes?

A. Yes sir.

Q. And you say you redeemed the property?

A. Yes sir, the receipt for the taxes would show what I have paid on it.

Q. How many years did you pay the taxes Mrs. Bradley?

A. Why the receipts will show.

Q. I will show you these receipts numbers one to 30, and ask you if those are the receipts you refer to.

A. Yes sir, those is the receipts.

Q. Did you pay all the amounts of money that are shown by these receipts?

(Mr. FOSTER:) This question is not controverted.

(By the COURT:) I understood by the statement in the opening that you paid the taxes. I think Mr. Johnson swore the first taxes he paid as I understood him were the taxes of 1871.

(Mr. HAMMOND:) Now do you concede we paid the taxes
321 from that until the commencement of this suit?

(Mr. FOSTER:) Oh yes, there is no question about it.

(Mr. HAMMOND:)

Q. Do you know about what the amount of those taxes is—how much it amounts to altogether?

Counsel for plaintiff objected to the question as immaterial, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

Q. Now Mrs. Bradley did you make any improvements upon this property?

A. Yes sir, the first thing—the first improvement was a house, and I think it was contracted for when Mr. Hitchcock was there, and there was a house built. I built a house, and Coddington moved into it—John Coddington.

Q. Well what next?

A. Why I sent to Chicago and got a carload of cedar posts to put where it was the wettest.

Q. Anything more?

A. Why I built houses—I built two other houses and barns.

Q. How many?

A. Three houses, and three barns, and except the one that was built what Coddington moved into—three houses on the place and three barns, and granaries and other things to improve the farm.

Q. How much did those buildings cost?

Counsel for plaintiff objected to the question, as immaterial, which objection was over-ruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

A. They cost $5000. I meant that the property belonged
322 to me; had swindled me and Prettyman had lied——

Counsel for plaintiff objected to the answer and asked that it be stricken, which objection was sustained by the court to all that part after the words "They cost $5000." and such part of the answer was excluded, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) The first part can stay in, but about the swindling and lying——

A. Well what do you call it? If I tell you that ain't I telling you a falsehood?

(By the COURT:) That might be, but it is not on the merits of this case.

(Mr. HAMMOND:)

Q. Now Mrs. Bradley, was there any draining done on the land?

A. Why yes, the Hickory Grove draining district I paid constantly.

Q. How much did you pay there?

Counsel for plaintiff objected to the question as immaterial.

(Mr. HAMMOND:) I offer to prove that Mrs. Bradley has paid $5500 drainage taxes on this land.

(By the COURT:) Oh I see no serious objection to it. It don't cut any figure. It is not testimony, but in a general way, the same as the price of the houses, I will let it go in.

To which ruling of the court counsel for plaintiff then and there excepted.

Q. The court says you can tell the amount of the drainage taxes you paid.

A. $5506 and some cents.

323 Q. Did you ever have any surveys made upon the farm?

A. Yes sir.

Q. Tell us about that?

A. Well I authorized Allison Breedlove to see to having a survey and I paid for it. Leander King was one of the surveyors, and I don't know who was the other. Mr. Prettyman never pretended to drain the land at all.

(By the COURT): Don't talk about that. It is not proper here. Answer their questions.

A. Well I will answer the questions, but when there is things that they don't ask I think I should be allowed to tell.

Q. Mrs. Bradley, how long did you remain in possession of that property, by yourself or by your tenants?

A. Well it was 1872 when I first took possession.

Q. And have you been in possession ever since?

A. I have been in possession ever since; paid all the taxes and had some ditches dug there.

Q. Did you ever do any tiling on the property?

A. I done some tiling.

Q. Do you remember how much?

A. I don't remember how much, but it was on the southwest side the tiling was done.

Q. Has anybody else ever been in possession of any part of this land since that time except yourself and your tenants?

A. Nobody. Nobody ever claimed any right or title to it at all but myself. I took possession of it to get what I could out of it.

Counsel for plaintiff objected to the answer, which objection was overruled by the court, to which ruling of the court counsel for plaintiff then and there excepted.

324 Q. Now Mrs. Bradley, have you or have you not claimed to be the owner of that property from the time you took possession in 1872?

Counsel for plaintiff objected to the question as incompetent, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

(By the COURT:) Oh there are a class of cases that the fact that a person claims to be the owner is competent evidence upon either side, but whether this falls within that, that is a serious question.

(By the WITNESS:) You ask me questions, now let me ask you one,—do you think Mr. Prettyman had one dollar's interest in that land?

(By the COURT:) We will have to stop that now. That is not competent. You ask her what she has claimed, without pointing out where or how, or in what way. A man can say he said this to one and that to another and people heard him say—there is no question about that, but whether she can come here and say I have always claimed—I doubt that very much. I will hold it is incompetent in the way it is put.

(By the WITNESS:) Well I think when a combination of men associated together——

(By the COURT:) Mr. Hammond, I think you better advise her about making remarks. Now listen to this gentleman; see if you can answer him.

Cross-examination by Mr. WALLACE:

X Q. Now Mrs. Bradley, you have had your depositions taken in this case twice have you not?

A. No sir, I think only once.

325 X Q. Do you remember before the first trial you had it taken?

A. Yes, perhaps I had. I remember now your coming up to my house and the depositions *was* taken in the office. Both come like a thunder-bolt.

X Q. You spoke about a lawyer by the name of Loucks a little while ago?

A. Yes sir, Judge Loucks.

X Q. He did some business for you?

A. He had the land for sale, and went down to sell it, and it wasn't worth ten dollars an acre he said, and he adjourned the sale.

X Q. Now do you remember when it was that it was advertised and the sale post-poned by Loucks?

A. Well it was I think '68 or '69—I won't be positive which.

X Q. When he returned and reported the facts to you that the land wasn't worth selling and that the sale was dismissed, what was the next thing after that that you did?

A. Why I had sued to get the other land back then.

X Q. The next thing you did was to bring this suit?

A. I think the suit was brought before. That man he brought there—that McCune—didn't have one cow——

X Q. Just confine yourself to the questions. And that suit was brought against McCune and Prettyman on your foreclosure suit in Mason county?

A. I don't know what you are driving at or what you mean.

X Q. But you say the next thing you done was to bring suit after he came back and reported to you?

A. The papers show.

X Q. Now in reference to the time when Coddington went into possession of the lands as your tenant, when was it that you took possession,—in reference to the time when Coddington went
326 into possession as your tenant?

A. I can't state just what year, but I guess the lease will show.

X Q. Now you don't understand. Do you remember how many years before Coddington went into possession as your tenant that you collected rents on the land?

A. Why I collected rents, you know, as I stated—I went down to Allison Breedlove's—went there, and after that Allison at different times—why it wasn't much got off of it.

X Q. Well in reference to the time when Coddington went into possession,—now how long before he went into possession was it you collected the rents—how many years before?

A. Well I can't tell. I never collected any rents at all until——

X Q. Well if you don't remember just say so. When was it you put the improvements on the place?

A. I think the houses—one house, was put up before Coddington went on.

X Q. Put up while Hitchcock was there?

A. While Hitchcock was there.

X Q. It was while Hitchcock was there you first commenced building fences and houses?

A. I think so.

X Q. Now then the money that you spent upon the land at that time, prior to the time Hitchcock was there, was simply to redeem from the tax sale and the payment of the taxes?

A. Yes sir.

X Q. And it was after Hitchcock went there that you commenced making these improvements that you speak of?

A. Yes sir.

X Q. And spent this money for drainage and putting houses and barns and the fences, was it?

A. Yes sir, I don't know what posts they put on, except
327 the old fences. Well there was some fence. That is all you want to ask me?

(Mr. WALLACE:) Yes.

A. Well how am I to state about Prettyman and McCune matter?

(Mr. CHIPERFIELD:) The court has said you can't tell about the Prettyman and McCune matter.

A. Well what can I tell?

(Mr. CHIPERFIELD:) Well we are through now.

A. But remember them that doesn't do right and just has got a higher power. I can stand most anything, but the Lord judges righteousness.

(Mr. HAMMOND:) If the court please, I want to ask Mrs. Bradley her age.

(Mr. FOSTER:) Why you can state it yourself.

(Mr. HAMMOND:) Eighty-five.

Counsel for defendant offered in evidence a lease from Lydia Bradley to Jacob Breener and W. N. Hitchcock, dated the 28th of December 1881, describing the premises in controversy, to the introduction of which counsel for plaintiff objected, but the court overruled the objection, to which ruling of the court counsel for plaintiff then and there excepted.

A copy of said lease is annexed hereto, marked Defendant's Exhibit 31, and made a part of this bill of exceptions, and is in words and figures as follows, to-wit:

This indenture, made this 28th day of December, in the year of our Lord one thousand eight hundred and eighty-one, between Lydia Bradley, of Peoria county, in the State of Illinois, of
328 the first part, and Jacob Behner and Walker N. Hitchcock, of the same place, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, their heirs, executors, administrators and assigns, has demised and leased to the said party of the second part all those premises situated, lying and being in — county of Tazewell and Mason, State of Illinois, known and described as follows: The N. E. ¼ and the N. E. ¼ of S. E. ¼ of section 22, and the S. ½ of section 23, and the N. ½ of the N. ½ of section 26, in township 23 N. R. 6 west 3rd P. M. in Mason county. The E. ½ of section 19, and the N. W. ¼ of section 19, and the E. ½ of the S. W. ¼ of section 19, in township 23 N. R. 3 west of 3rd P. M. in Tazewell county, and making 1180 acres of land.

To have and to hold the said above described premises, with the appurtenances, unto the said party of the second part, their heirs

executors, administrators and assigns, from the first day of March, in the year of our Lord one thousand eight hundred and eighty-two, for and during and until March 1st, A. D. 1892, ten years.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, her heirs, executors, administrators and assigns, to pay the said party of the first part as rent for said demised premises, the sum of twelve hundred dollars per year on the first day of January each and every year during the term of
329 this lease. Said second party is to erect and build 1200 rods more or less of fence on the Dunne farm and to use old material as far as the same will go, said second party is to make said fence & be paid for same at rate $1.50 per day for man. After said fence is built said fence is to be maintained in good condition, said second party performing the labor thereof without cost or charge & said first party to furnish the necessary material therefor during term of this lease.

Said first party to have 160 acres of land and the grove fenced, and to build a house on the Prettyman land in Mason county & do all necessary ditching to drain said land in Mason Co. and said second party to put the same in cultivation as fast as the land is fit to be cultivated.

Said first party is to loan said second party the sum of three thousand dollars at seven percent. interest per annum, the interest to be paid annually January first each year, and whenever they fail to pay said interest or show the value of the money in stock, then this lease is to cease and determine & said first party to have the right to enter & take possession of such stock or material as may be found on said premises to satisfy such default in payment of interest or principal.

And the said party of the second part further covenants with the said party of the first part, that said second party has received said demised premises in good order and condition, and that at the expiration of the time in this lease mentioned, or sooner determination thereof by forfeiture, he will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident or natural wear excepted; and also will
330 keep said premises in good repair during this lease, at his own expense.

It is further agreed by the said party of the second part, that neither they nor their legal representatives will underlet said premises, or any part thereof, or assign this lease without the written assent of the said party of the first part had and obtained thereto.

It is expressly understood and agreed, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of

the covenants herein contained, to be kept by the said party of the second part, their heirs, executors, administrators and assigns, it shall and may be lawful for the said party of the first part, her heirs, executors, administrators, agent, attorney or assigns, at her election, to declare said term ended, and into the said premises or any part thereof, either with or without process of law, to re-enter; and the said party of the second part, or any other person or persons occupying in or upon the same, to expel, remove and put out, using such force as may be necessary, in so doing, and the said premises again to re-possess and enjoy, as in her first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution and distress by law or not, and the said party of the second part, in that case, hereby agree to waive all legal rights which they may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give the said party of the first part security for the payment of said rent in manner aforesaid, anything hereinbefore
331 contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, her heirs, executors, administrators or assigns, as aforesaid, or in any other way, the said party of the second part, their heirs, executors, administrators or assigns, do hereby covenant and agree to surrender and deliver up the said above described premises and property peaceably to said party of the first part, her heirs, executors, administrators and assigns, immediately upon the determination of the said term as aforesaid, and if they shall remain in possession of the same twenty days after such default, or after the termination of this lease in any of the ways above named, they shall be deemed guilty of forcible detainer of said premises under the statute and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law as above stated.

Witness the hands and seals of the parties aforesaid in duplicate.

LYDIA BRADLEY. [SEAL.]
JACOB BEHNER. [SEAL.]
W. N. HITCHCOCK. [SEAL.]

Def't's Ex. 31 5/24/1901 J. V. H.

JOHN A. CODDINGTON, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. CHIPERFIELD:

Q. State your full name?
A. J. A. Coddington.
Q. The J. stands for John?
A. Yes sir.

Q. And what is your age please?

A. About sixty.

332 Q. Where do you reside?

A. I live now in Cass township, Mason county.

Q. Are you acquainted with the Hickory Grove farm?

A. Yes sir.

Q. How recently have you seen it?

A. Well I have seen it within a year or so.

Q. By the Hickory Grove farm we mean the Bradley farm?

A. Yes sir.

Q. When did you first know these premises?

A. About 1878.

Q. Under what circumstances did you first become familiar with the farm?

A. Allison Breedlove put me there to rent it and run it.

Q. In 1878?

A. Yes sir.

Q. How long did you remain in possession of that farm?

A. Until about seven years ago.

Q. Before or after the commencement of this suit—did you remain there until the commencement——

A. No, I went away before this suit was commenced.

Q. Now at the time you went there in 1878, you may state whether or not these premises were enclosed?

A. Well they were sometimes by fences, posts, boards, some down some up, some had been partly burned, and some unburned, but you could see the signs of the fence.

Q. Any wire there?

A. I don't recollect of any wire.

Q. I will ask you Mr. Coddington if this whole tract of land there would be swept with fires in the dry season?

A. All the low lands, yes.

333 Q. And were those fences which you spoke of, fences that had been destroyed by fires?

A. Yes, sir.

Q. Do you know of your own knowledge how long Allison Breedlove had been in possession of those premises?

A. I do not. Several years before I went there, as near as I could learn by the conversations, etc.

Q. What did you do with these premises from 1878 until a short time before the commencement of this suit?

A. I farmed what high land could be plowed, a cut hay on the low lands; took in cattle there to pasture, etc.

Q. Did anybody else except by your consent or permission occupy any part or portion of these premises during that time?

A. No, sir.

Q. Did you have any lease for those premises?

A. I got a lease after I was there awhile. They had me there quite awhile without a lease.

Q. From whom did you obtain that lease?

A. I think I got the first lease from Mrs. Bradley.

Q. During all the time you was in possession of these premises, for whom was you holding it?

A. For Mrs. Bradley.

Q. The defendant in this case?

A. Yes sir.

Q. Now you state positively Mr. Coddington, from 1878 down to the time you left these premises, that no one else occupied any portion of them?

A. No sir.

Q. And that you used them in the manner in which you have indicated?

334 A. Yes sir, with the exceptions I went there before this Hitchcock lease, and I was there under the Hitchcock lease or during the time that he was there and then since that.

Q. During the time which you remained there, you may state if any improvements were made upon the premises.

A. Why all the time, from the time I went there.

Q. State the nature of those improvements that were made and who made them.

A. Well about the first improvements that were made there was some ditching done.

Q. About when was that?

A. Well it was after I was there about five years I think, there was a ditch dug that reached from Hainesville up to the valley road.

Q. For what purpose?

A. For the purpose of draining this and making it so we could cut hay on it and farm it.

Q. After that what if anything was done?

A. Well there was a road throwed up from the grove out to Manito; there was buildings built on three of the places,—the places was divided up in three parts, and three full sets of buildings put on it, and it was fenced in my time.

Q. At the time you went there were there any buildings of any kind on the ground?

A. There was an old house.

Q. Were there any hay ricks?

A. No, there was an old house merely to live in. The hay, we stacked all of it without any barns or breaks.

Q. When you went in under Breedlove, state to whom you paid your rent—was it an annual rent?

335 A. I settled with Mr. Breedlove.

Q. And after Mr. Breedlove left, to whom did you pay your rent?

A. Always paid my rent to Mrs. Bradley.

Q. Now you started to tell about what improvements were subsequently made on the land,—did you finish?

A. Well the place was divided up into three parts, and three good sets of buildings put on it for each tenant, and my son acted as a

tenant on a part after it was divided, and there was another man took a part that was out towards town there, and since that the tenant to that place has become Johnny Young—has been there several years.

Q. When you speak of three sets of buildings on the place, what do you mean—house, barn and granaries and usual farm buildings?

A. Yes, house, barn, and large cribs—granaries.

Q. Did you have any way of telling from what you could see at the time when you first went there, as to how long these fences had been there?

A. Had been there a good while certainly from the appearance of them.

Q. Were they fences enclosing all of this land?

A. Now I think that the west side of that place was enclosed by a ditch. Take the north side, and the east side and the south side showed fences—there was some of the posts, and some panels would be up and some panels would be down, and part of the boards burned, and some places eight or ten panels burned all off clean, but on the north and on the east and on the south——

Q. Well you say that there was evidence of the fact that this land had been enclosed on the north, east and south?

A. Yes sir.

Q. Totally enclosed?

336 A. Yes sir.

Q. Now could you gather from what you saw at that time, and at these places, in what manner that fence has been removed?

A. Been removed by fire.

Q. And from your experience and knowledge of this place, from what source did the fire come?

A. Start anywhere and everywhere; burned off every fall.

Q. The dry grass and stubble, whatever it was, was burned and the whole country swept?

A. Yes sir.

Q. Were there any roads put on this place?

A. There was a road throwed up from the grove out to Manito.

Q. Part of it on this place?

A. Yes sir, went through this place.

Q. Who built that road?

A. Mrs. Bradley and the Ætna throwed up the road.

Q. Who built these houses?

A. Mrs. Bradley built them all; built all of the buildings; paid for all the fencing; paid for the setting of the fencing.

Q. After you went away was the farm again thoroughly enclosed?

A. Yes sir, we left it enclosed; it is enclosed now.

Q. And kept enclosed?

A. And kept enclosed.

Q. Now you knew Benjamin Prettyman?

A. Yes sir.

Q. Did you see Benjamin Prettyman from time to time while you was in the possession of these premises?

A. Yes sir, he was seen frequently.

Q. Did you ever have any talk with him about these premises?

A. Yes sir, one particular time we had quite a talk.

Q. Now about when was that Mr. Coddington?

337 A. That was about fourteen years ago.

Q. Now state all the conversation you had with Mr. Prettyman at that time.

Counsel for plaintiff objected to the question as immaterial, which objection was sustained by the court, to which ruling of the court counsel for defendant then and there excepted.

(Mr. CHIPERFIELD:) We offer to show by this witness that in a conversation which he had with Benjamin Prettyman about fourteen years ago, that in that conversation Mr. Prettyman inquired how they were getting along, and went on to tell how the land was when he got it, and said it was very low and wet, and called the witness' attention to the ditches that ran there away from the grove, apparently north and south, and said he had them put there, and told witness of the little circumstances that took place when they were doing that ditching, and said when they did the surveying whenever they come to people that had land in the bottom he made it a point to go away and let them keep it, and he said he was treated good by everybody until he come to Mose Meeker, and that in speaking of the land he referred to it as land which he had once owned, and used the expression when I owned it, and said of the land, when I owned it I done thus and so.

(By the COURT:) Objection will be sustained.

To which ruling of the court counsel for defendant then and there excepted.

Q. Let me ask if this land that was under cultivation, you plowed and cultivated in the due course of husbandry?

A. Yes sir, paid a third rent on it.

Cross examination by Mr. WALLACE:

X Q. I just want to fix a date by Mr. Coddington, I think
338 he is wrong in one date. Mr. Coddington, you had your deposition taken in this suit did you not?

A. Yes sir.

X Q. At Peoria, at Mrs. Bradley's house?

A. Yes.

X Q. Do you recollect the time when you said you went on to the land—that you first saw it in 1878, and that you went there in 1879?

A. I think I went there in August 1878.

(Mr. CHIPERFIELD:)

Q. If you did say August 1879 in your deposition, was you mistaken?

A. I think I would be.

(Mr. WALLACE:)

X Q. Well let me ask you, were you asked in your examination there what you fixed your date of the time of year, if anything, when you went there—were you asked that question?

A. In Peoria?

X Q. Yes.

A. Well now I really don't know just every word I was asked there.

X Q. And your answer was, "Well there is quite a good deal of it if you want it all." "I don't want a great long story." "I was fixing that year to go back to Jersey, and Mr. Breedlove told me if I would go on the grove, the lay he would give me and not go to Jersey."

A. Yes sir, that is correct.

X Q. So to the best of your knowledge it was about the month of August 1879 you went on the place—"I think it was about the month of August of the year after I came here,"—you came here in 1878 didn't you Mr. Coddington?

A. No sir, I think I come here in 1877.

339 PHINNEUS CODDINGTON, a witness sworn and examined on behalf of defendant, testified as follows:

Direct examination by Mr. CHIPERFIELD:

Q. You have been sworn?

A. Yes sir.

Q. You may state your name.

A. Phinneus Coddington.

Q. Are you related to the gentleman who has just left the witness stand?

A. He is my father.

Q. How old are you Mr. Coddington?

A. I am thirty-six years old.

Q. I will ask you if you recall and are acquainted with the Hickory Grove farm, the Bradley farm?

A. Yes sir.

Q. Did you ever reside on that farm?

A. I did.

Q. With your father?

A. With my father, yes, sir.

Q. When did you first go onto that farm?

A. We went there in the fall of 1878.

Q. How long did you continue to reside there?

A. Until about seven years ago.

Q. During all of the time when you resided there did you occupy all of the premises in controversy?

A. Yes sir.

Q. Did any one at any time occupy any part or portion of those premises?

A. No sir.

Q. When you went there was this land enclosed?

340 A. There had been a fence around it on three sides.

Q. Which sides were those?

A. Why on the north and on the east and on the south.

Q. And what was there on the west side?

A. A ditch.

Q. Did you make any examination of the remnants of the fence?

A. Why I afterwards pulled some of them up after it was drained.

Q. Could you tell from such examination that you made of the fence as to whether it was an old or a new fence?

A. Oh it was old fence. When the drainage had dug a ditch through there they throwed out old posts that had been burned off at the top of the ground, lots of them.

Q. And could you tell in what manner this fence had disappeared?

A. It had been burned off by fire.

Q. Was that fence on the outside boundary line of all this tract of ground?

A. Yes sir.

Q. Could you tell from an inspection of the plows when you first went there in 1878, as to whether or not any part of the ground had been cultivated before that time?

A. Well there was what we called the Bradley plow, ten or eleven acres on the west side of this plow, a portion of the high land that extended down to the swamp, that we always farmed.

Q. Now during all of the time that you occupied those premises for whom did you occupy them?

A. With my father until I got old enough to run a farm of my own, and then I rented three eighties.

Q. Well of whom did you lease?

A. Lydia Bradley.

341 Q. And of whom did your father lease?

A. Lydia Bradley.

Q. And during all the time you were in possession of any part of these premises, from whom were you holding?

A. When we first went there we went under Bradleys.

Q. Allison Bradleys as what?

A. As Mrs. Bradley's agent.

Q. Was you with your father in Pekin about fourteen years ago, and heard a conversation with Benjamin S. Prettyman?

A. Yes sir, I was.

(Mr. CHIPERFIELD:) Now, if your honor please, we offer to show the same by this witness that we offered to show by his father.

(Mr. WALLACE:) Same objection.

(By the COURT:) This objection will be sustained.

To which ruling of the court counsel for defendant then and there excepted.

(Mr. CHIPERFIELD:)

Q. Do you know of improvements having been made on these premises—the entire tract?

A. Yes sir.

Q. Just state in a general way the character of these improvements?

A. Well the first improvement was a ditch dug with a spade, from what we call the Press Trent bluff to Hainesville, and then after that it was followed by the drainage district and dug out by the dredge boat, and then there was a road running to Manito built, to Hickory grove—to this place—which Mrs. Bradley paid for half of it—digging one ditch. Then there was tiling done to the amount of over $600. of the tile, and then there were four houses built there—three houses built there under Mr. Hitchcock, and then
342 the house was moved and a new part built to it, which I occupied and leased afterwards, and a barn and a corn bin, and then for my father where he lived there was a new house and a new barn and a big corn bin, and down on what we call the 160 there was a new house and a barn and a corn bin built there also.

Cross-examination by Mr. WALLACE:

X Q. How old are you Mr. Coddington?

A. Thirty-six years old.

X Q. And you say you first went there when you was about thirteen years old?

A. Yes sir.

X Q. Well were you with your father when he made the arrangements with Allison Breedlove?

A. Yes sir.

X Q. Remember all about it?

A. Yes sir.

X Q. And you say that was in 1878?

A. 1878. I will tell you why I know it is in 1878——

X Q. Well you answer my question. Now Mr. Coddington, you say that after you went there, there were these three or four houses—these improvements were put on?

A. Yes sir.

X Q. Do you remember what year it was the first house was put on?

A. Why I think it was in 1881.

X Q. And the other ones were put on subsequent then?

A. Yes, the others were put in afterwards.

X Q. And about how late was the last one that you remember of?

A. The last houses was built in 1892 I think.

X Q. Then was the houses or improvements you speak of as being made, were made from 1881 up to 1892?

A. Yes.

343 And here the defendant rested her case.

And the foregoing was all the testimony introduced in evidence, upon either side, upon the hearing of the above entitled cause.

And thereupon counsel for defendant submitted to the court and asked that they and each of them be held, the following propositions of law:

I.

The court holds that section 30, chapter 77, Revised Statutes of Illinois, as construed and applied by the supreme court of the State of Illinois, has the effect of depriving the defendant of her property without due process of law, and is therefore in violation of section 1 of the 14th amendment to the Constitution of the United States, and section 14, article 2, of the constitution of the State of Illinois.

II.

The court holds that ejectment by a mortgagor or his grantee, claiming the bare legal title, cannot be maintained against a mortgagee in possession, after default, where the latter is in the possession of the premises involved, under a certificate of purchase issued to her at said sale, even although the time within which the holder of said certificate of purchase could have procured a deed therefor has expired.

III.

344 That section 30, chapter 77, of the Revised Statutes of Illinois, as construed by the supreme court of the State of Illinois, is in violation of section 10, of article 1, of the Constitution of the United States, and of section 14, article 2, of the constitution of the State of Illinois, as applied to contracts in existence prior to its passage, or rights acquired under such contracts prior to its passage, such construction gives it the effect of impairing the validity of a contract obligation.

IV.

That section 30, of chapter 77, of the Revised Statutes of the State of Illinois, can not be constitutionally applied to the rights of the defendant, Lydia A. Bradley, as mortgagee in the present case, because it was enacted since the said mortgage was given, and is in conflict with sections 9 and 10 of article 1 of the Constitution of the United States, and section 14 of article 2 of the constitution of the State of Illinois.

V.

Section 30 of chapter 77, of the Revised Statutes of Illinois, in so far as it relates to contracts in existence or rights acquired, prior to the time of its passage, is obnoxious to section 10, article 1, Constitution of the United States, and section 14, article 2, constitution of the State of Illinois.

VI.

That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, is in violation of article 1, section 10, of the Constitution of the United States.

VII.

345 That section 30, of chapter 77, of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, to the facts in the present case, violates section 1 of the 14th amendment to the Constitution of the United States.

VIII.

That section 30 of chapter 77, of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, to the facts in the present case, violates section 1, of the 14th amendment to the Constitution of the United States, and also section 1979 of the Revised Statutes of the United States.

IX.

That if McCune or Prettyman failed to redeem said premises under the statute regulating the right of redemption from the sale of the mortgaged premises involved herein, within the time provided by law, then the right, title and interest of the said McCune, Prettyman and his grantee, and each of them, would be cut off; and they or either of them could not afterwards, as against the defendant, assert affirmatively, under this section, in this action, any purported title which existed in them prior to the expiration of the time allowed for such redemption, for the purpose of reinvesting themselves, or either of them, with the possession of, or title to, said premises, because of the failure of the purchaser at said sale, the original mortgagee, the said Lydia Bradley, to take out, within five years, a deed for said premises, based upon said certificate of purchase.

X.

That the said section 30 of chapter 77, Revised Statutes of Illinois, should be so construed as to be a statute of repose. That by the elapse of five years from the date of the mortgage sale
346 within the taking out of the deed by the purchaser at said sale, there is no presumption, either because of such sale or because of such failure so to take out a deed, that the debt is paid. The original mortgagee who went into the possession of said premises for the purpose of protecting herself as such, and who was also the purchaser at said sale, would not, by reason of such failure so to take out said deed within said five years, be thereby deprived of the right to possess and occupy said premises until the payment of the mortgage debt.

XI.

A mortgagee in a mortgage, or a trustee in a trust deed, has the right, upon condition broken, to enter into and take possession of the mortgaged premises, and to retain and occupy the same until the payment of the debt.

XII.

The court holds that section 30, chapter 77, of the Revised Statutes of the State of Illinois, should not be given such construction as to render the certificate of purchase of the defendant, Lydia A. Bradley, null and void, or to create a presumption that the mortgage debt is paid, or to divest her of her title as mortgagee in possession of said premises.

XIII.

That section 30, of chapter 77, of the Revised Statutes of the State of Illinois, should not be given such a construction as will have the effect of merging the mortgage debt, first, into the decree; second, into the certificate of purchase, which then represented the debt; and thirdly of divesting the mortgagee's title, as mortgagee in possession or otherwise, when the certificate of purchase becomes null and void, as held by the supreme court under the statute.

347 XIV.

Section 30 chapter 77 of the Revised Statutes of the State of Illinois should be given such construction in this case that it merely affects the remedy of the said Lydia A. Bradley defendant herein, and not such rights as she may have under and by the certificate of purchase under said mortgage foreclosure proceeding.

XV.

That the failure of McCune and Prettyman to redeem the premises involved herein from the sale under the decree of foreclosure, within the time provided by law, completely and perpetually divested the said McCune and Prettyman and each of them of all of their right, title and interest, in and to said premises; and that they could not, thereafter, in this action, as against the defendant, Lydia A. Bradley, as mortgagee in possession of said premises, establish any legal title to said premises, either at common law, or under section 30 of chapter 77, Revised Statutes of the State of Illinois, for the purpose of reinvesting themselves, or either of them, with the possession of said premises, based upon the equity of redemption which existed in them or either of them prior to the expiration of the period limited by law within which they could redeem, solely because of the failure of the defendant as purchaser at said sale, to take out, within five years, a deed based upon the certificate of purchase issued to her.

XVI.

The court holds that a mortgagee in possession, after sale of the premises under a decree in foreclosure, and the purchase of the same by the said mortgagee, and the issuing to her of a certificate of purchase entitling her to a deed at any time after the ex-
348 piration of 15 months from said sale, and within 5 years from the date thereof, cannot, after the expiration of said 5 years, at a time when all right to redeem said premises has expired, be dispossessed of said premises in an action of ejectment by the original mortgagor, or his grantee, as the holder of the legal title, because the said mortgagee, as the purchaser at said sale, has failed to take out a deed based upon her certificate of purchase within the time limited by the statute; for the reason that, being in possession as against the mortgagor and his grantees, she is entitled to retain such possession until her said mortgage is satisfied.

XVII.

The court holds the law to be that the laws which exist at the time and place of the making of a contract enter into it and form a part of it. This embraces alike those laws which affect its validity, construction, discharge and enforcement.

That at the date of the mortgage of McCune to Johnson, Aug. 13, 1862, the laws of this State in regard to the enforcement of mortgage contracts vested the legal title in the mortgagee upon the failure of the mortgagor to comply with the conditions contained in the mortgage, and at law the mortgagee had a right to sue for and recover the possession of the land itself.

That the act of defendant in taking peaceable possession of the vacant and unoccupied mortgaged premises was not a trespass, but was within her rights under the mortgage as fixed by the laws of this State then in force and effect, and was no more than the courts would have awarded her if she had sought their aid.

That the possession of defendant was that of mortgagee from that time until she purchased the premises at the master's sale. That no new title was conferred upon her by such purchase, since
349 the certificate of purchase does not purport to convey title, nor did it take away any part of the legal or equitable title theretofore vested in her.

That after the decree and sale in Bradley *v.* McCune, the mortgagor and his assigns, under the laws as then held and announced by the courts of this State, no longer held the legal title, but an equity of redemption as fixed by the decree of foreclosure.

That upon the expiration of the period of redemption Jan. 27, 1881, the equity of redemption of mortgagor and his grantees ceased altogether and thereafter they had no right, title or interest in said premises.

That defendant thereupon became entitled to a deed from the master in chancery, and being in possession with a right to the title, had a perfect equitable title.

That the statute of this State relating to taking our deeds upon certificates of purchase sec. 30, ch. 77, Rev. Stat. Ill., was passed after the date of said McCune mortgage, and cannot be given an effect which would impair the obligation of the mortgage contract. Only such effect can be given to the statute as comports with the constitution of the State and of the United States. If this statute be given an effect which would terminate defendant's right, title, and interest in the premises and deprive her of the right to maintain her possession if she failed to take a deed from the master within five years, such effect would amount to an impairment of contract and be obnoxious to the constitutions of this State and the United States. The court holds the effect of said statute is merely to cut off defendant's right to a conveyance from the master, leaving her in possession and with the same legal and equitable title she held before the lapse of the five years.

The court holds further that if defendant maintained her
350 possession by actual residence of her tenants upon said premises for seven years prior to the commencement of this action, and it appears that her equitable title is deducible of record from the United States, then plaintiff is barred by sec. 4 ch. 83 Rev. Stat. Ill. from maintaining this action.

XVIII.

The court holds the law to be that the laws which exist at the time and place of the making of the contract enter into it and form a part of it. This embraces alike those laws which affect its validity, construction, discharge and enforcement.

That at the date of the mortgage of McCune to Johnson, Aug. 13, 1862, the laws of this State in regard to the enforcement of mortgage contracts vested the legal title in the mortgagee upon the failure of the mortgagor to comply with the conditions contained in the mortgage, and at law the mortgagee had a right to sue for and recover the possession of the land itself.

That the act of defendant in taking peaceable possession of the vacant and unoccupied mortgaged premises was not a trespass, but was within her rights under the mortgage as fixed by the laws of this State then in force and effect, and was no more than the courts would have awarded her if she had sought their aid.

That the possession of defendant was that of mortgagee from that time until she purchased the premises at the master's sale. That no new title was conferred upon her by such purchase, since the certificate of purchase does not purport to convey title, nor did it take away any part of the legal or equitable title theretofore vested in her.

That after the decree and sale in Bradley *v.* McCune, the mortgagor and his assigns, under the laws as then held and announced by the courts of this State, no longer held the legal title,
351 but an equity of redemption as fixed by the decree of foreclosure.

That upon the expiration of the period of redemption Jan. 27, 1881, equity of redemption *or* mortgagor and his grantees ceased altogether and thereafter they had no right, title or interest in said premises, and cannot recover in this action.

XIX.

The court holds that in this action only the legal title can be considered. That by the trust deed of McCune to E. G. Johnson the legal title was, as between them, conveyed to Johnson as security for defendant's notes.

That when default was made in the payment of said notes the legal title in Johnson, and the equitable title in defendant, as between them and McCune or his grantee-, became absolute. That defendant was then entitled to possession as against McCune or his grantees.

That she had a right to recover possession by ejectment or take possession, peaceably if possible, concurrently with her action to foreclose. That having taken possession of the mortgaged premises, lying vacant and unclaimed, pending foreclosure, defendant entered under equitable title deducible of record from the United States and if she continued in possession of said premises by residence of her tenants for more than seven years prior to the commencement of this action she is entitled to the protection of sec. 4 ch. 83 of the Rev. Stat. of Ill. barring the right of plaintiff to recover in this action.

That defendant's equitable title under the mortgage became vested upon breach of condition, and if it appears from the evidence that the breach *occorred* prior to July 1st, 1872, then the defendant had a vested equitable title prior to the enactment of sec. 30 ch.
352 77 Rev. Stat. Ill. and that statute being a limitation statute affecting remedies only could not operate to divest the equitable title in defendant and cut off the running of the statutory bar under sec. 4 ch. 83 Rev. Stat. Ill.

XX.

The court holds that in this action only the legal title can be considered. That by the trust deed of McCune to E. G. Johnson the legal title was, as between them, conveyed to Johnson as security for defendant's notes.

That when default was made in the payment of said notes the legal title in Johnson, and the equitable title in defendant, as between them and McCune or his grantees, became absolute. That defendant was then entitled to possession as against McCune or his grantees.

That she had a right to recover possession by ejectment or take possession, peaceably *of* possible, concurrently with her action to foreclose.

That having taken possession before decree she became mortgagee

in possession, entitled to hold possession, as against said McCune or his grantees, until payment of said mortgage indebtedness, or redemption of the premises from sale.

That the purchase of the property at the master's sale for a part only of the mortgage debt was not, as between defendant and said McCune or his grantess, a payment or satisfaction of the mortgage debt, nor did the sale and certificate of purchase divest or transfer any title.

That a statute of limitations barring recovery upon said mortgage debt or barring the right to a deed under the foreclosure proceedings affects their remedy only, and does not divest rights already acquired under said contracts or proceedings, as actual pay-
353 ment of the indebtedness would. In this sense barring the debt is not equivalent to payment. The debt still exists after the bar is complete.

The court holds, therefore, that defendant is still in possession as mortgagee after condition broken and as against McCune or his grantees is entitled to retain possession until said debt is paid.

XXI.

The court holds that as between the mortgagor and mortgagee after condition broken, the legal title is in the latter and he may maintain ejectment.

That defendant Lydia Bradley, as *cestui que trust* in the McCune mortgage became vested with equitable title to the premises when default was made in the payment of the mortgage debt.

That by the decree of foreclosure in Bradley *vs.* McCune, her equitable title was confirmed, and McCune and his grantees thereafter had only an equity of redemption.

That by the master's sale and certificate no change was made in the title, since the certificate did not purport to convey or vest title, but only a right to a title after the expiration of the period of redemption.

That after the expiration of the period of redemption and failure of McCune or his grantees to redeem, their equity of redemption was cut off and they had no further interest in the premises.

That defendant being then in possession and having a right under her certificate of purchase to a deed conveying the legal title to her, was equitable owner of the premises.

That sec. 30 ch. 77 Rev. Stat. Ill. being a limitation statute affecting the remedy only can not divest or terminate the equitable
354 title so vested in defendant, but can only be *a*ffective to cut off her right to a conveyance of the legal title.

That if the equitable title so vested in defendant is deducible of record from the United States, and it appears that she was in actual possession by residence of her tenants upon said premises more than seven years prior to the commencement of this suit, then plaintiff is barred by sec. 4 ch. 83 Rev. Stat. Ill. from maintaining his action.

XXII.

The court holds that sec. 30 ch. 77 Rev. Stat. of Ill. is a limitation statute materially impairing the legal remedies provided for the enforcement of mortgage contracts, and that it cannot be applied to such contracts executed prior to its enactment without conflicting with sec. 10 art. 1 Constitution of the United States and sec. 14 art. 2 constitution of Illinois.

That defendant's certificate of purchase derived under forelosure of the trust deed of McCune to Johnson dated Aug. 13, 1868, did not become null and void under said statute at the end of five years from the expiration of the period of redemption, but her rights continued to be as fixed by the laws of this State in force at the date said mortgage was given.

That the law of this State at the date of said mortgage was that after condition broken the mortgagee had absolute title and right to possession, while the mortgagor had only an equity of redemption. That after foreclosure and failure to redeem the mortgagor's title was extinguished.

The court therefore holds that plaintiff's right, title, interest and equity of redemption were extinguished on the 27th day of January 1881 when he or his grantor failed to redeem from the sale to defendant, and he cannot recover.

355 XXIII.

That by virtue of the decree rendered in the mortgage foreclosure proceedings, introduced in evidence herein, and the sale thereunder, and a failure to redeem therefrom within the statutory period, all of the right, title and interest of said McCune, Prettyman and his grantee, in said premises, was cut off, destroyed and terminated, and in this proceeding they or either of them cannot affirmatively assert such alleged title against the defendant, Lydia A. Bradley.

Which said propositions of law and each of them were *refused* by the court, to which ruling of the court counsel for defendant then and there excepted.

Whereupon the court found the defendant guilty and the title to the premises described in the declarations to be in the plaintiff in fee simple.

To which finding of the court counsel for defendant then and there excepted.

Whereupon counsel for defendant moved the court to set aside the finding above set out, and to grant unto the defendant a new trial herein, and in support of same filed the following reasons:

STATE OF ILLINOIS, } ss:
Peoria County, }

In the Circuit Court, September Term, 1902.

H. W. LIGHTCAP }
vs. } Ejectment.
LYDIA BRADLEY. }

Now comes defendant, by W. W. Hammond and Chiperfield & Chiperfield, her attorneys, and moves the court for a new
356 trial herein upon the following grounds:

1st.

Because upon the trial of said cause, the court refused to admit proper evidence offered upon the part of the defendant.

2nd.

Because upon said trial, the court permitted, against the objection of the defendant, improper evidence to be introduced upon the part of the plaintiff.

3rd.

Because the court erred in striking from the files the second plea filed by the defendant herein.

4th.

Because the evidence is insufficient to support the findings of the court.

5th.

Because it appears from the evidence that the title of plaintiff's grantor was divested, as between him and the mortgagee upon breach of condition of the McCune mortgage, and by final decree in Bradley *vs.* McCune he was decreed to have thereafter, as between him and defendant, only an equity of redemption, and said decree, which was final as between the said parties, further ordered that unless redemption was made according to the said decree and the statutes of this State within fifteen months from the date of sale shown by the certificate of purchase offered in evidence, the title of plaintiff's grantor, and all persons holding under him should be forever barred and foreclosed from all equity of redemption and claim, of, in, and to the mortgaged premises, and there is no evidence offered tending to show that redemption was made from said sale in accordance with such decree, or that said decree has ever been re-
357 versed or set aside or modified, but so far as the evidence shows the same is still in full force and effect as between the parties, and plaintiff's title is barred as therein provided.

6th.

Because the statute of limitations, sec. 30, ch. 77 Rev. Stat. of Illinois, passed after the execution of said McCune mortgage, materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 1 sec. 10 Constitution of the United States.

7th.

Because the statute of limitations sec. 30, ch. 77 Rev. Stat. of Illinois, passed after the execution of said McCune mortgage, materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 13, sec. 17 constitution of 1848, and art. 2 sec. 14 constitution of 1870, of the State of Illinois.

8th.

Because it appears from the evidence that defendant's rights under said mortgage became vested prior to the passage of sec. 30, ch. 77, Rev. Stat. of Ill., and that prior to said statute and after condition broken the fee simple title to said premises was, as between mortgagor and mortgagee and their grantees, in the latter, and such title cannot be divested by said statute without violating the 14th amendment to the Constitution of the United States and sec. 1979 U. S. R. S. enacted to enforce same.

9th.

Because it appears from the evidence that the defendant has been in actual possession of the premises, by tenants residing thereon, for more than seven years prior to the commencement of this
358 suit, and if the plaintiff has proved a connected title from the Government, then the trust deed of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, was such equitable title as is contemplated by sec. 4, ch. 83, Rev. Stat. Ill.

10th.

Because it appears from the evidence that the defendant has been in possession of the premises in controversy for more than seven years prior to the commencement of this suit, claiming to own the same, and has paid all taxes assessed thereon for said years under claim and color of title, viz., title derived by the mortgage of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, which, under sec. 6, ch. 83, Rev. Stat. Ill., bars plaintiff's recovery.

11th.

Because it appears from the evidence that the defendant went into possession of said premises in the summer or fall of 1872, after having filed her bill to foreclose the mortgage of McCune to John-

son, and has continued in possession ever since, and has paid all taxes on said premises and has foreclosed the said mortgage except as to taking out a master's deed on the certificate of purchase, and that while the time for taking out such deed has passed, and she is no longer entitled to the deed she is still a mortgagee in possession, and the plaintiff, as holder of the mortgagor's title, cannot recover against her.

12th.

The court erred in refusing to hold, as the law applicable in said case, each of the propositions submitted by the defendant, numbered from 'one' to 'twenty-four' inclusive.

359 Wherefore, for the foregoing reasons: the defendant prays that a new trial, at common law, may be granted unto her.

W. W. HAMMOND,
CHIPERFIELD & CHIPERFIELD,
Attorneys for Defendant.

Which motion for a new trial was over-ruled by the court, to which ruling of the court, counsel for defendant then and there excepted.

Whereupon counsel for defendant entered a motion in arrest of judgment, which motion was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

Whereupon the court rendered judgment that the defendant is guilty, and that the plaintiff is the owner in fee simple of the premises described in the declaration, and that he recover the possession of the premises described in the declaration and that a writ issue for the same, and that judgment be entered against defendant for costs.

Counsel for defendant objected to the rendition of judgment on the ground there is no sufficient description of the premises involved in the plaintiff's declaration, which objection was over-ruled by the court, to which ruling of the court counsel for defendant then and there excepted.

Whereupon counsel for defendant prayed an appeal to the supreme court of the State of Illinois, which is allowed upon filing bond for two thousand dollars in thirty days, to be approved by the clerk of this court, and bill of exceptions in sixty days.

360 Forasmuch as the matters and things hereinbefore contained do not fully appear of record, the defendant presents this her bill of exceptions, and prays that the same may be signed and sealed by the court, and the same is done accordingly this 18th day of November A. D. 1902.

GEORGE W. THOMPSON, [SEAL.]
Presiding Judge.

Filed Nov. 19, 1902.
J. C. SEVERNS,
Circuit Clerk.

361 UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Fulton, }

Pleas before the Honorable John A. Grey, one of the three judges of the ninth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house, in the city of Lewistown, in said county and State, on the twenty-second (the same being the fourth Monday) of September, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh.

Present: Honorable John A. Gray, judge. B. H. Taylor, State's attorney. J. C. Severns, clerk. L. C. Fouts, sheriff.
Attest: J. C. SEVERNS, *Clerk.*

Court opened by proclamation.

And be it remembered that afterwards, to-wit: on October 17, A. D. 1902, the same being one of the regular days of said term of said court, the Hon. G. W. Thompson, judge presiding, the following among other proceedings were had and entered of record in said court in the words and figures following, that is to say:

H. W. LIGHTCAP
vs.
LYDIA BRADLEY, Substitute as Defendant and as the Landlord and Warrantor of John E. Young, J. B. Charlton, William Martin, J. T. Reynolds, H. J. Hootman, and Aaron Evans. } *Ejectment.*

362 And now on this day come the parties to this suit, by their respective attorneys, and by the agreement of the parties hereto, a jury is waived herein, and this cause is tried by the court, and this cause coming on for a final hearing hereof, and the court hears the evidence adduced herein on the part of the plaintiff. Whereupon the defendant demurs to the evidence adduced herein on the part of the plaintiff, which said demurrer the court after due consideration doth overrule and disallow. Whereupon the defendant, by her attorney, adduces evidence upon her part in this behalf, and the defendant submits her propositions of law in this behalf, and the court after hearing all the evidence of the respective parties and the arguments of their respective attorneys, doth find the defendant guilty of unlawfully withholding from the said plaintiff, the possession of the lands and tenements in said declaration described, in manner and form as therein alleged, and doth further find the estate and title established in the plaintiff, to be an estate in fee simple.

It is therefore ordered and adjudged by the court, that the plaintiff H. W. Lightcap, have and recover from the *plaintiff*, Lydia Bradley, the possession of the premises in said declaration subscribed,

to-wit: the northeast quarter of section twenty-two (22); the northeast quarter of the southeast quarter of section twenty-two (22); the south half of section twenty-three (23) and the north half of the north half of section twenty-six (26), in township twenty-three (23), north range six (6), west of the third (3rd) principal meridian, in the county of Mason and State of Illinois; that the said plaintiff, H. W. Lightcap, hold the title thereto in fee simple and that ever of possession issue therefor.

It is further ordered and adjudged by the court that the plaintiff H. W. Lightcap, have and recover from the defendant, Lydia Bradley, his costs herein expended, to be taxed, and that execution

363 issue therefor. To which finding and judgment of the court, the defendant then and there excepted, and thereupon, comes the defendant by her attorneys, and moves the court for a new trial herein, which motion is hereby overruled by the court, to which ruling the defendant then and there excepted.

And now comes the said defendant, by her attorneys and moves the court in arrest of judgment, which motion is hereby overruled by the court; the defendant then and there excepted. Thereupon, defendant prays an appeal to the supreme court of Illinois, and the same is allowed, on defendant filing bond in the sum of two thousand (2000.00) dollars in thirty days, with sureties to be approved by clerk of this court, and bill of exceptions in sixty days.

And the said demurrer of defendant to the evidence offered herein on the part of the plaintiff, being in writing, a copy thereof is hereto appended, being in the words and figures following, that is to say:

STATE OF ILLINOIS, } ss:
Peoria County, }

Circuit Court, September Term, 1902.

H. W. LIGHTCAP }
vs. } Ejectment.
LYDIA BRADLEY. }

Now comes the defendant, after the hearing of the evidence offered by plaintiff to sustain the issues herein upon his part, and comes to said evidence and says that the same is not sufficient in law:

1st. Because the plaintiff has shown no title in himself as against this defendant.

2nd. Because the evidence shows a mortgage by plaintiff's grantor to E. G. Johnson, trustee, for this defendant, and breach of condition thereof and a foreclosure of said mortgage complete as

364 far as plaintiff's grantor was concerned by which his title, as between him and the mortgagee was divested.

3rd. Because it appears from the evidence that the title of plaintiff's grantor was divested, as between him and the mortgagee upon

breach of condition of the McCune mortgage, and by final decree in Bradley *vs.* McCune he was decreed to have thereafter, as between him and defendant, only an equity of redemption, and said decree, which was final as between the said parties, further ordered that unless redemption was made according to the said decree and the statutes of this State within fifteen months from the date of sale shown by the certificate of purchase offered in evidence, the title of plaintiff's grantor, and all persons holding under him should be forever barred and foreclosed from all equity of redemption and claim of in and to the mortgaged premises, and there is no evidence offered tending to show that redemption was made from said sale in accordance with such decree, or that said decree has ever been reversed or set aside or modified, but so far as the evidence shows the same is still in full force and effect as between the parties, and plaintiff's title is barred as therein provided.

4th. Because the statute of limitation sec. 30 ch. 77 Rev. Stat. of Ill. passed after the execution of said McCune mortgage materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 1 sec. 10 Constitution of the United States.

5th. Because the statute of limitations sec. 30 ch. 77 Rev. Stat. of Ill. passed after the execution of said McCune mortgage materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 13 sec. 17 of the constitution of 1848 and art. 2 sec. 14 constitution of 1870.

6th. Because it appears from the evidence that defendant's
365 rights under said mortgage became vested prior to the passage of sec. 30 ch. 77 Rev. Stat. of Ill. and that prior to said statute and after condition broken the fee simple title to said premises was, as between mortgagor and mortgagee and their grantees, in the latter, and such title cannot be divested by said statute without violating the 14th amendment to the Constitution of the United States.

7th. Because it appears from the evidence that defendant's rights under said mortgage became vested prior to the passage of sec. 30 ch. 77 Rev. Stat. of Ill. and that prior to said statute and after condition broken the fee simple title to said premises was, between mortgagor and mortagee and their grantees, in the latter, and such title cannot be divested by said statute without violating sec. 1979 U. S. R. S.

CHIPERFIELD & CHIPERFIELD &
W. W. HAMMOND, *Att'ys for Def't.*

(Filed Oct. 17, 1902.

J. C. SEVERNS,
Circuit Clerk.)

And the said reasons for a new trial of this cause, on the part of the said defendant, being in writing, a copy thereof is hereto appended, being in the words and figures following, that is to say:

STATE OF ILLINOIS, } ss:
Peoria County, }

In the Circuit Court, September Term, 1902.

H. W. LIGHTCAP
vs. } Ejectment.
LYDIA BRADLEY.

Now comes defendant, by W. W. Hammond and Chiperfield & Chiperfield, her attorneys, and moves the court for a new trial herein upon the following grounds:

1st. Because upon the trial of said cause, the court refused to admit proper evidence offered upon the part of the defendant.

2nd. Because upon said trial, the court permitted, against the objection of the defendant, improper evidence to be introduced, upon the part of the plaintiff.

366 3rd. Because the court erred in striking from the files the second plea filed by the defendant herein.

4th. Because the evidence is insufficient to support the findings of the court.

5th. Because it appears from the evidence that the title of plaintiff's grantor was divested, as between him and the said mortgagee upon breach of condition of the McCune mortgage, and by final decree in Bradley *v.* McCune he was decreed to have thereafter, as between him and defendant only an equity of redemption, and said decree, which was final as between the said parties, further ordered that unless redemption was made according to the said decree and the statutes of this State within fifteen months from the date of sale shown by the certificate of purchase offered in evidence, the title of plaintiff's grantor, and all persons holding under him should be forever barred and foreclosed from all equity of redemption and claim, of, in, and to the mortgaged premises, and there is no evidence offered tending to show that redemption was made from said sale in accordance with such decree, or that said decree has ever been reversed or set aside or modified, but so far as the evidence shows the same is still in full force and effect as between the parties, and the plaintiff's title is barred as therein provided.

6th. Because the statute of limitations, sec. 30 ch. 77 Rev. Stat. of Illinois, passed after the execution of said McCune mortgage, materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 1 sec. 10 Constitution of the United States.

7th. Because the statute of limitations sec. 30 ch. 77 Rev. Stat. of Illinois, passed after the execution of said McCune mortgage, materially impairs the obligation of said contract and cannot
367 be applied to the defendant without conflicting with art. 13 sec. 17 constitution of 1848, and art. 2 sec. 14 constitution 1870, of the State of Illinois.

8th. Because it appears from the evidence that defendant's rights under said mortgage became vested prior to the passage of sec. 30 ch. 77, Rev. Stat. of Ill. and that prior to said statute and after condition broken the fee simple title to said premises was, as between mortgagor and mortgagee and their grantees, in the latter and such title cannot be divested by said statute without violating the 14th amendment to the Constitution of the United States and sec. 1979 U. S. R. S. enacted to enforce same.

9th. Because it appears from the evidence that the defendant has been in actual possession of the premises, by tenants residing thereon, for more than seven years prior to the commencement of this suit, and if the plaintiff has proved a connected title from the Government, then the trust deed of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, was such equitable title as is contemplated by sec. 4 ch. 83, Rev. Stat. Ill.

10th. Because it appears from the evidence that the defendant has been in possession of the premises in controversy for more than seven years prior to the commencement of this suit, claiming to own the same, and has paid all taxes assessed thereon for said years under claim and color of title, viz: title derived by the mortgage of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, which, under sec. 6, ch. 83, Rev. Stat. Ill. bars plaintiff's recovery.

11th. Because it appears from the evidence that the defendant went into possession of said premises in the summer or fall of 1872, after having filed her bill to foreclose the mortgage of McCune
368 to Johnson, and has continued in possession ever since, and has paid all taxes on said premises and has foreclosed the said mortgage except as to taking out a master's deed on the certificate of purchase, and that while the time for taking out such deed has passed and she is no longer entitled to the deed, she is still a mortgagee in possession, and the plaintiff, as holder of the mortgagor's title cannot recover against her.

12th. The court erred in refusing to hold, as the law applicable to said case, each of the propositions submitted by the defendant from 'one' to 'twenty-four' inclusive.

Wherefore, for the foregoing reasons: the defendant prays that a new trial, at common law, may be granted unto her.

W. W. HAMMOND,
CHIPERFIELD & CHIPERFIELD,
Attorneys for Defendant."

(Filed Oct. 17, 1902.

J. C. SEVERNS,
Circuit Clerk.)

(Said bill of exceptions being filed herein, on to-wit: ——, A. D. 1902, a copy thereof is hereto appended, in the words and figures following, that is to say.)

(Said bond being filed herein, a copy thereof is in words and figures, as follows, that is to say:)

"Know all men by these presents: that we Lydia Bradley, George W. Scott and Harry A. Hammond of the county of Fulton and State of Illinois, are held and firmly bound unto H. W. Lightcap in the penal sum of two thousand dollars, for the payment of which well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally
369 firmly by these presents. Sealed with our seals and dated at Peoria, Ills. this 25 day of October in the year of our Lord one thousand nine hundred and two.

The condition of the above obligation is such. That whereas, the said H. W. Lightcap did, on the 17th day of October one thousand nine hundred and two at a term of the circuit court, then being holden within and for the county of Fulton and State of Illinois, obtain a judgment in ejectment against the above bounden Lydia Bradley and costs of suit, in a certain suit in ejectment, wherein H. W. Lightcap was plaintiff and Lydia Bradley defendant from which judgment the said Lydia Bradley has prayed for and obtained an appeal to the supreme court of the State of Illinois.

Now if the said Lydia Bradley shall duly prosecute said appeal and shall moreover pay the amount of said judgment, costs, interest and damages, rendered and to be rendered against her the said Lydia Bradley in case the said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

LYDIA BRADLEY. [L. S.]
GEORGE W. SCOTT. [L. S.]
HARRY A. HAMMOND. [L. S.]

(Filed and approved this 28th day of Oct. A. D. 1902.

J. C. SEVERNS,
Circuit Clerk.)

370 STATE OF ILLINOIS, } ss:
County of Fulton, }

I, J. C. Severns, clerk of the circuit court in and for the county of Fulton in the State of Illinois, and keeper of the records and seal thereof: Do hereby certify that the above and foregoing are true, full, correct and complete copies, of all pleadings, orders of record, bill of exceptions, and all other matters and things of record in said court, in a certain cause, as consolidated, lately pending therein on the law side thereof, wherein H. W. Lightcap was plaintiff, and Lydia Bradley was defendant; as the same appear from the records and files in my office now remaining.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at Lewistown, Illinois, this 19th day of November, A. D. 1902.

[SEAL.] J. C. SEVERNS,
Clerk of the Circuit Court of Fulton County, Illinois, and Keeper of the Records and Seal Thereof.

371 Supreme Court of Illinois, December Term, A. D. 1902.

LYDIA BRADLEY, Appellant, *vs.* H. W. LIGHTCAP, Appellee. } Appeal from the Circuit Court of Fulton County.

Assignment of Errors.

And now comes the appellant herein and says that in the record and proceedings aforesaid there is manifest error in this:

1. The judgment of the court below is contrary to the law.
2. The judgment of the court below is contrary to the evidence.
3. The judgment of the court below is contrary to both the law and the evidence.
4. The court erred in finding for the plaintiff.
5. The court erred in refusing to find for the defendant.
6. The court erred in refusing to hold as the law, the propositions submitted by the defendant.
7. The court erred in refusing to hold as the law propositions, I, II, III, IV, V, VI, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, and XXIII, submitted to it by the defendant, and in refusing each of the same.
8. The court erred in refusing to sustain the demurrer interposed to the plaintiff's evidence by the defendant.

372 9. The court erred in refusing to grant to the defendant a new trial, and in overruling the defendant's motion therefor.

10. The court erred in refusing to allow the defendant's motion in arrest of judgment.
11. The court erred in overruling the motion in arrest of judgment made by the defendant.
12. The court erred in striking the second plea of defendant from the files.
13. The court erred in admitting improper evidence upon the part of the plaintiff.
14. The court erred in refusing to admit proper testimony offered upon the behalf of the defendant.
15. The judgment of the court below is repugnant to the Constitution of the United States and of the State of Illinois.
16. The construction of section 30, chapter 77, Revised Statutes of the State of Illinois, as applied by the trial court to the facts in the present case, violates section 10, article 1, of the Constitution of the United States, section 1, of the fourteenth amendment to the Constitution of the United States, section 1979 of the Revised

Statutes of the United States, and section 14, article 2, of the constitution of Illinois.

Wherefore this appellant prays that the judgment of the court below may be reversed.

W. W. HAMMOND,
CHIPERFIELD & CHIPERFIELD,
Attorneys for Appellant.

373 Supreme Court of Illinois, December Term, A. D. 1902.

LYDIA BRADLEY, Appellant, vs. H. W. LIGHTCAP, Appellee. } Appeal from Fulton County Circuit Court. Ejectment No. 2880.

Additional Assignment of Errors.

Now comes the appellant, by W. W. Hammond and Chiperfield & Chiperfield, her attorneys, and by leave of court first had and obtained, presents the following additional assignment and specification of errors and says, that in the record and proceedings and in the rendering of the judgment of the circuit court aforesaid, and in the foregoing record, ther- is manifest error, in this to-wit:

1.

The circuit court erred in not holding that the certain statute of Illinois approved March 22nd, 1872, and in force July 1st 1872, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree" and section 30 thereof, did not apply to the case, right, and title of appellant.

2.

The construction and interpretation and application by said circuit court of said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors, number one (1) foregoing), was and
374 is unconstitutional and in violation of section 10 of article one of the Constitution of the United States of America.

3.

The construction and interpretation and application by the said circuit court, of said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors, number one, (1) foregoing), was and is unconstitutional and in violation of section 14 of article two, of the constitution of the State of Illinois.

4.

Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional, and in violation of section 10 of article one of the Constitution of the United States of America.

5.

Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional and in violation of section 14, of article two of the constitution of the State of Illinois.

6.

The construction and interpretation and application by the circuit court of said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors number one (1) foregoing) was and is in violation of a certain statute of the United States known and called section 1979 of the Revised Statutes of the United States according to the revision of 1874, approved June 22nd, 1874.

375 7.

Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, was and is in violation of a certain statute of the United States known and called section 1979 of the Revised Statutes of the United States according to the revision of 1874, approved June 22nd, 1874.

Wherefore and for other manifest errors, in violation of the Constitution and laws of the United States, the appellant prays that said judgment of said circuit court may be reversed and set aside, and held for naught, and said cause remanded for further proceedings in conformity to said Constitution and laws of the United States of America.

Respectfully submitted.

LYDIA BRADLEY, *Appellant*,
By W. W. HAMMOND AND
CHIPERFIELD & CHIPERFIELD,
Attorneys for Appellant.

376 In the Supreme Court of Illinois, December Term, A. D. 1902.

LYDIA BRADLEY, Appellant, *vs.* H. W. LIGHTCAP, Appellee. } Appeal from Fulton County Circuit Court. Ejectment. No. 2880.

And now comes the appellant herein, by W. W. Hammond and Chiperfield & Chiperfield, her attorneys, and asks leave of the court to assign additional errors upon the record heretofore filed herein, pursuant to the rules of this court, said additional errors being hereto attached, and made a part of this motion.

W. W. HAMMOND AND
CHIPERFIELD & CHIPERFIELD,
Attorneys for Appellant.

377 Supreme Court of Illinois, December Term, A. D. 1902.

LYDIA BRADLEY, Appellant, *vs.* H. W. LIGHTCAP, Appellee. } Appeal from Fulton County Circuit Court. Ejectment. No. 2880.

Additional Assignment of Errors.

Now comes the appellant, by W. W. Hammond and Chiperfield & Chiperfield, her attorneys, and by leave of court first had and obtained, presents the following additional assignment and specification of errors and says, that in the record and proceedings and *and* in the rendering of the judgment of the circuit court aforesaid, and in the foregoing record, there is manifest error, in this, to-wit:

1.

The circuit court erred in not holding that the certain statute of Illinois approved March 22nd, 1872, in force July 1st, 1872, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree," and section 30 thereof, did not apply to the case, right, and title of appellant.

378 2.

The construction and interpretation and application by said circuit court of said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors, numbered one (1) foregoing), was and is unconstitutional and in violation of section 10 of article one of the Constitution of the United States of America.

3.

The construction and interpretation and application by the said circuit court, of said statute of the State of Illinois, approved March

22, 1872, (and more fully entitled and described in the additional assignment and specification of errors, numbered one (1) foregoing) was and is unconstitutional and in violation of section 14 of article two, of the constitution of the State of Illinois.

4.

Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors numbered one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional, and in violation of section 10 of article one of the Constitution of the United States of America.

5.

Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors numbered one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional and in violation of section 14, of article two of the constitution of the State of Illinois.

379 6.

The construction and interpretation and application by the circuit court of said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors numbered one (1) foregoing) was and is in violation of a certain statute of the United States known and called section 1979 of the Revised Statutes of the United States according to the revision of 1874, approved June 22nd, 1874.

7.

Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors numbered one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, was and is in violation of a certain statute of the United States known and called section 1979 of the Revised Statutes of the United States according to the revision of 1874, approved June 22nd, 1874.

Wherefore and for other manifest errors, in violation of the Constitution and laws of the United States, the appellant prays that said judgment of said circuit court may be reversed and set aside and held for naught and said cause remanded for further proceedings in conformity to said Constitution and laws of the United States of America.

Respectfully submitted.

LYDIA BRADLEY, *Appellant.*
W. W. HAMMOND AND
CHIPERFIELD & CHIPERFIELD,
Attorneys for Appellant.

380 And afterwards, to-wit: on the 9th day of December, A. D. 1902, certain proceedings were had and orders made and entered of record in said court, among which is the following, viz:

LYDIA BRADLEY
vs. } 2880. Appeal from Fulton.
H. W. LIGHTCAP.

And now on this day comes the appellant by counsel and moves the court for a rule on the appellee to produce the original exhibits used on the trial of this cause.

And afterwards, to-wit: on the 10th day of December, A. D. 1902, certain proceedings were had and orders made and entered of record in said court, among which is the following, viz:

LYDIA BRADLEY
vs. } 2880. Appeal from Fulton.
H. W. LIGHTCAP.

And now on this day the court having duly considered the motion of appellant for a rule on appellee to produce original exhibits, and being fully advised in the premises denies the same.

And afterwards, to-wit: on the 11th day of December, A. D. 1902, certain proceedings were had and orders made and entered of record in said court, among which is the following, viz:

LYDIA BRADLEY
vs. } 2880. Appeal from Fulton.
H. W. LIGHTCAP.

And now on this day leave is by the court granted appellant to make additional assignment of errors on the record.

And afterwards, to-wit: on the 15th day of December, A. D. 1902, certain proceedings were had and orders made and entered of record in said court, among which is the following, viz:

381 LYDIA BRADLEY
vs. } 2880. Appeal from Fulton.
H. W. LIGHTCAP.

Now on this day come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand

said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

382 At a supreme court, begun and held at Springfield on Tuesday, the third day of February, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice, Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general, B. H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to wit, on the eighteenth day of February, A. D. 1903, the same being one of the days of the term of court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

LYDIA BRADLEY
v.
H. W. LIGHTCAP. } No. 2880. Appeal from Fulton.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor:

383 At a supreme court, begun and held at Springfield on Tuesday, the third day of February, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice, Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general, Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, that afterwards, to-wit, on the eighteenth day of February, 1903, the opinion of the court was filed in the words and figures following to-wit:

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2880. Error to —. Appeal from Fulton.

384 Docket No. 2880—Agenda 54—Dec., 1902.

LYDIA BRADLEY
v.
H. W. LIGHTCAP.

Mr. Justice CARTWRIGHT delivered the opinion of the court:

This is the same ejectment suit in which H. W. Lightcap was plaintiff in the circuit court of Fulton county and Lydia Bradley was defendant, which was before us on a former appeal, and is reported under the title of Lightcap *v.* Bradley, 186 Ill. 510. A judgment against the plaintiff, Lightcap, was then reversed, and the cause was remanded to the circuit court for further proceedings in accordance with the views expressed in the opinion then filed. The case was re-instated in the circuit court, and at the May term, 1901, it was again tried before the court and a jury, when, at the conclusion of all the evidence, the court instructed the jury to find a verdict for the plaintiff. The defendant, exercising her right, under the statute, to a new trial upon payment of costs, (Hurd's Stat. 1899, p. 730,) paid the same and made a motion for a new trial, which was allowed. At the September term, 1902, of said circuit court, a jury having been waived, the cause was tried before the court, resulting in a finding for the plaintiff. Judgment was entered accordingly, and the defendant appealed.

The first question raised relates to the admissibility of certified copies of certain deeds offered in evidence by the plaintiff and admitted over the objection of defendant. Plaintiff filed the affidavit provided for by the statute, that he claimed title through a common source with the defendant. (Hurd's Stat. 1899, p. 729.) The defendant filed an affidavit denying that she claimed title through such source. This affidavit denying the common source of title imposed upon the plaintiff the necessity of proving that the parties did claim title from a common source, and this he did. The effect of the defendant's denial was only to leave upon him the burden of proving both chains of title back to the common source, and if he showed a better title from such source he would be entitled to recover. It is no objection to the exercise of such right that the evidence offered proves defendant's title to be worthless. (Smith *v.* Laatsch, 114 Ill. 271; Village of Chillicothe *v.* Burr, 185 *id.* 322.) In addition, plaintiff proved title by a regular chain of conveyances from the Gov-
385 ernment of the United States, and the conveyances objected to were back of the common source of title. Having proved,

beyond all question, that the parties claimed title from a common source, it was not necessary that plaintiff should trace his title back of that source, and if there was any error in the ruling of the court it was not hurtful to the defendant. For this reason the court declined in Pollock v. Maison, 41 Ill. 516, to inquire whether an affidavit was sufficient to authorize the introduction in evidence of a copy of a deed. The objections, however, appear to have been without merit, as they related to the acknowledgment of deeds all of which had been of record more than thirty years, and were admissible as ancient deeds without any proof of acknowledgment. It is proper to admit in evidence a certified copy of a deed which has been of record more than thirty years, although not acknowledged as required by the law in force when it was executed. (Whitmore v. Heneberry, 73 Ill. 109; Stalford v. Goldring, 197 Ill. 156.) We are also of the opinion that the certificates of acknowledgment, with the certificates of conformity and proof of the statutes of Indiana, were sufficient, in law.

On the last trial the evidence respecting the title of the parties was the same as upon the first trial, as contained in the record which was reviewed in Lightcap v. Bradley, *supra*, and every proposition of law now raised arose upon the former record. There is no question presented or discussed on this appeal, either relating to the propositions of law submitted to the trial court or assignments of error or in the argument of counsel, that could not have been properly raised on the former record. The decision at that time settled every question which might have been raised and every objection which might have been made whether then raised and made or not. The doctrine of *res judicata* embraces not only what has been actually determined in a former suit, but also extends to any other matter which might have been raised and determined in it. (Harvey v. Aurora and Geneva Railway Co. 186 Ill. 283; Pease v. Dibble, 149 *id.* 456.) A litigant cannot be allowed to have his case heard in this court partly at one time and partly at another. It is said by counsel that there is some difference in the proof of the time that the defendant took possession of the premises, but there is no difference whatever which could in any manner affect the rights of the parties. The defend-
386 ant's bill, by which she sought to have the release and discharge of a portion of the land originally covered by the mortgage set aside and canceled and her mortgage foreclosed upon all the land, including the premises in controversy, was filed February 22, 1872. It was in the summer of 1872, after the bill had been filed, that she now claims to have taken possession of the land through an agent, by taking charge of it and allowing hay to be cut from it. The court declined to set aside the transaction by which the release of a part of the land from the encumbrance was secured, but entered a decree of foreclosure for the land now in question. She bought the land at the master's sale under decree of foreclosure, and the question involved is not affected by the change in the evidence respecting the time that she took possession.

Counsel for appellant say that the principal question which they

now ask to raise upon the record is the constitutionality of section 30 of chapter 37 of the Revised Statutes of this State, and the point relied upon is, that said statute is repugnant to section 10 of article 1 of the Constitution of the United States, forbidding the impairment of the obligation of contracts, and the same question is raised upon section 14 of article 1 of the constitution of this State, and also section 1 of the fourteenth amendment to the Constitution of the United States. The argument is based both on the fact that the statute was enacted after the note and to defendant was executed, and also upon the ground that the statute was rendered unconstitutional by the construction which we gave to it on the former appeal. It is argued that the law as construed by this court entered into the contract at the time it was made; that under the law as construed when the note and mortgage were executed, there was an estate and title in the mortgagee in the mortgaged premises which continued in him after the land was sold at the foreclosure sale; that the mortgage held title to the mortgaged property subject only to an equity of redemption in the mortgagor, which was recognized only by courts of equity, and that after the foreclosure and purchase of the mortgaged premises the mortgagee still held title, although the certificate of purchase became null and void. It cannot be that by the former decision we gave a new construction to these questions and thereby rendered the statute unconstitutional as impairing the obligation of the contract; and to this question some attention, we think, may properly be given.

The case cited in this case was reported August 12, 1890, and contains a brief in the opinion delivered on the former appeal fully and ample demonstrates that no new construction of the law was adopted, but that there was a strict adherence to the principles laid down in previous decisions. Among the cases so cited [illegible] it was held in Ryan v. Dunlap, 17 Ill. 40 (decided in 1855) that the mortgage debt is the principal thing and the mortgage a mere incident to it; that a transfer of the debt by assignment or delivery of the note would generally carry the mortgage in equity, and payment would discharge the mortgage lien, and that a verbal or even a written discharge of the debt by negotiation in money, property or otherwise would discharge the lien and without [illegible] action entered upon the mortgage itself or the margin of the record. A mortgage lien is not [illegible] at law in this State, and the title of the mortgagee, such as it is, has come to be considered as [illegible] to assign the debt, with or without an assignment of the mortgage, the mortgage will pass only in equity. To [illegible] in the mortgagee in trust for the holder of the debt. In Bowen v. Shaw, 20 Ill. 246, decided in 1858, it was held that the mortgage is but an incident attached to the debt; that the mortgagee is distinct from the debt, is not a [illegible] of mortgages and has no determinate value, and that the debt and mortgage cannot be separated and placed in different hands. In Wagner v. Bissell, 22 Ill. 30, decided in 1859, it was held that a verbal and [illegible] payment of the debt is the principal thing and the mortgage only

an incident,—a mere security for the payment of the debt,—and that a release of the debt secured by the mortgage need not be under seal.

It was the constant holding of this court, both before and since the execution of this trust deed, that the title conveyed to the mortgagee is a mere incident of the mortgage debt, available only for the purpose of securing payment; that the term of its existence is measured by the debt, and when the debt is paid, discharged, released or barred by limitation, the mortgagee's title is extinguished by operation of law. So, also, the court has always held that
388 after a judgment or decree the rights of the parties are no longer governed by the contract, but by the law. Mason *v.* Eakle, Breese, 83, (decided in 1824,) is the first of an unbroken line of cases which so decide. In that case the obligation of the contract was to pay the sum mentioned in a note with twenty per cent. interest, but after the judgment the contract was no longer in force; the right to six per cent. interest rested alone upon the statute. In this case, the obligation of the contract was to pay the sum mentioned in the notes secured by the mortgage, with ten per cent. interest, but after the rendition of the decree the obligation of that contract ceased and the decree drew only six per cent. interest by virtue of the statute, and after the sale there was a right of redemption by paying the amount of the bid, with a new rate of interest fixed by the statute providing for redemption. We do not see how it can be said that the mortgage contract is in force. If that obligation was in force after the decree, then the debt has been bearing ten per cent. interest all this time.

Furthermore, if the construction given to the law respecting the title of a mortgagee had been changed or modified after the execution of the trust deed this case would not be affected, since the statute did not act upon the obligation thereby created, and it is not claimed, as we understand, that there has been any change in judicial construction as to the rights of a purchaser at a foreclosure sale. The statute, (Rev. Stat. chap. 77, sec. 30, p. 625,) the substance of which was given in our former opinion, went into effect July 1, 1872, and is as follows: "When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor at any time within five years from the expiration of the time of redemption. The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. If the time of redemption shall have elapsed before the taking effect of this act, a deed may be given within two years from the time this act shall take effect. When such deed is not taken within the time limited by this act the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is re-
389 strained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof

restrained shall not be taken as any part of the five years within which said holder shall take a deed."

At the time the statute was passed the notes and trust deed were in full force and effect, and under it the rights and obligations of the parties remained the same, and even the remedies provided by the law were in no manner affected. The defendant had several different remedies which she might have pursued for the collection of her debt. She had the right to have the land sold by the trustee under the power. She could have sued McCune, the maker of the notes. She could have maintained ejectment in the name of the trustee for the possession of the land, for the purpose of applying the rents and profits to the satisfaction of the debt, or could have foreclosed by any of the methods provided by law. None of these remedies were changed or in any manner affected by the statute. She adopted the method of an ordinary foreclosure, and the statute did not operate upon that remedy until after the decree and sale, when the contract right had been fixed and determined by the court and the contract created by the trust deed had come to an end, so far as this land was concerned. When the defendant purchased the land at the sale under the decree she assumed an entirely new relation, arising out of the statute and not depending on any privity of contract. The sale discharged the land from the trust deed and transferred the lien created by the contract into a statutory lien by the certificate of purchase, and the land was released as security for the balance of the debt. (Smith *v.* Smith, 32 Ill. 198; Seligman *v.* Laubheimer, 58 *id.* 124; Ogle *v.* Koerner, 140 *id.* 170; Davis *v.* Dale, 150 *id.* 239.) This new relation came into existence by the purchase at the master's sale on October 27, 1879, seven years after the passage of the act in question, and that relation was the same in defendant's case as it would have been if some other person had been the purchaser.

That the legislature might enact this law without violating any constitutional provision seems to us beyond question. The power of the State to pass statutes of limitation is unquestioned, and it has always been held that such statutes, even if they affect existing rights, are not unconstitutional if a reasonable time is given
390 for the assertion of the right before the bar takes effect. Whether the statute pre-supposed redemption by the mortgagor or whether any statute of limitations rests upon a presumption is not material, although it is now considered as an established rule that such statutes do not rest upon presumptions, but prescribe limitations, founded in wisdom and public policy, to the rights or remedies to which they are applicable. (3 Parsons on Contracts, 62; 19 Am. & Eng. Ency. of Law,—2d ed.—146.) All statutes of limitation are based on *laches*. (Mettler *v.* Miller, 129 Ill. 630.) In their final effect the statutes may not only bar the remedy but extinguish the right. In Jackson *v.* Lamphire, 3 Pet. 281, the court said: "It is within the undoubted power of State legislatures to pass recording acts by which the elder grantee shall be postponed to a younger, if the prior deed is not recorded within the time limited,

and the power is the same whether it is dated before or after the recording act. Though the effect of such law is to render the prior deed fraudulent and void, it is not a law impairing the obligation of contract. Such, too, is the power to pass acts of limitation, and their effect. Reason and sound policy have led to the adoption of laws of both descriptions, and their validity cannot be questioned." An example of such a law is found in Vance *v.* Vance, 108 U. S. 574. By the Civil Code of Louisiana the property of a tutor was tacitly mortgaged in favor of the minor from the date of the appointment of the tutor, as security for his administration and the responsibility which resulted from it. There was a tacit mortgage under this law, which had been in force from October 15, 1859. In 1869 a new constitution was adopted, providing that tacit mortgages should cease to have effect against third persons after January 1, 1870, unless duly recorded, and the legislature passed an act to carry this provision into effect. It was held that the statute was in the nature of a statute of limitations; that the obligation of the contract was not impaired, and that the State may establish, alter, lengthen or shorten the period of prescription of existing rights, provided a reasonable time be given in the future for complying with the statute.

It is true that the laws providing for the enforcement of contracts become a part of the contract when made, and any subsequent law which impairs the right acquired under such laws necessarily impairs the obligation. Appellant relies upon a number of cases,
391 all of which come within the rule that laws changing the obligation of the contract or imposing conditions not expressed in it violate the constitutional provision. Bronson *v.* Kinzie, 42 U. S. 311, is one of these cases. John H. Kinzie executed a bond July 13, 1868, to Arthur Bronson, and secured its payment by a mortgage on certain premises in the town of Chicago. When the mortgage was made the mortgagor had no right of redemption after the sale, and there was no limitation upon the right of the mortgagee to a sale of the premises to satisfy the debt. The legislature of this State, on February 19, 1841, passed a law providing that the mortgagor should have a right of redemption within twelve months from the day of sale, and his creditors should have such right for three months thereafter. Another act was passed February 27, 1841, directing that the property should be appraised, and should not be sold at all unless two-thirds of such appraisement should be bid therefor. The court said that the State might shorten the period of time within which claims should be barred by the statute of limitations and might exempt property from execution, although the new remedy might be less convenient than the old and in some degree render the recovery of debts more difficult, but the State could not change the nature and extent of existing remedies so as to materially impair the rights and interests of the mortgagee. At the time the mortgage was executed the right to a sale free and discharged from any interest remaining in the mortgagor was a part of the contract, and there was an absolute right to a sale for the satis-

faction of the debt. The new laws provided that the estate of the mortgagor should not be extinguished by a sale but should continue twelve months thereafter, with a like estate in his judgment creditors for three months afterward, and also imposed a new condition that prevented any sale unless two-thirds of the amount at which the property had been valued by the appraisers should be bid therefor. The doctrine that such a statute was void was re-affirmed in McCracken *v.* Hayward, 43 U. S. 608, where the provision that property levied on under an execution should not be sold unless it would bring two-thirds of its valuation according to the opinion of three householders was held unconstitutional. In Lessee of Grantly *v.* Ewing, 44 U. S. 407, the same rule was applied to a similar law of the State of Indiana. In United States *ex rel. v.* Quincy, 4 Wall., 535, the relator, Von Hoff-
392 man, was the owner of coupons of the city of Quincy, attached to bonds issued when the law authorized the city to collect a special annual tax sufficient to pay the annual interest on the bonds, which was to be set aside and held separate from other city revenues as a fund specially pledged for the payment of such interest. But for a subsequent act of the legislature there would have been no difficulty in enforcing the payment of the interest by the collection of a tax sufficient to meet it as it accrued from time to time, and it was held that the obligation of the contract could not be impaired by a withdrawal of the power to tax, which was in the nature of a trust for the enforcement of the agreement. Edwards *v.* Kearzey, 96 U. S. 595, was a case where a new constitution of the State of North Carolina exempted property from execution to such an extent as to impair the obligation entered into by the issue of bonds prior to the date of such constitution. It was held that if the exemptions were excessive, and fatal, in their magnitude, to the enforcement of a contract, so as to impair and practically destroy its value, the obligation would be impaired and the act would be void. None of these decisions have any proper relation to this case.

This statute was under consideration in Ryhiner *v.* Frank, 105 Ill. 326, where the court said: "The statute was one of limitation and affected only the remedy." And it was held to be a valid law, taking away no vested right and leaving a reasonable time for the pursuit of the remedy. Terry *v.* Anderson, 95 U. S. 628, was a case where the statute of limitations of the State of Georgia in force when the obligation was created did not bar the action until the expiration of twenty years from the time such action accrued. The legislature passed an act by which causes of action accruing prior to June 1, 1865, must be brought by January 1, 1870, or the right of accrued action should be forever barred. It was held that the law was valid; that the question of time to be allowed was one of reasonableness, of which the legislature of the State was primarily the judge, and that the decision of that department could not be overruled by the courts unless a palpable error had been committed. The court said: "The parties to a contract have no more a vested interest in a particular limitation which has been

fixed than they have in an unrestricted right to sue. They have no more a vested interest in the time for the commencement of an action than they have in the form of
393 the action to be commenced; and as to the forms of actions or mode of remedy, it is well settled that the legislature may change them at their discretion, provided adequate means of enforcing the right remains." Town of Koshkonong *v.* Burton, 104 U. S. 668, was an action to recover an amount due on bonds, with interest coupons, issued January 1, 1857, by the town of Koshkonong, Wisconsin, under authority conferred by an act of the legislature. A limitation act was subsequently passed, which, it was contended, impaired the obligation of the contract. The court held the law valid, and that if a reasonable time, taking all the circumstances into consideration, was given by the new law for the commencement of an action before the bar should take effect the obligation of the contract was not impaired. In Wheeler *v.* Jackson, 137 U. S. 245, where the ultimate effect of the statute was to extinguish the right, the court said: "It is a settled principle of this court that the legislature might prescribe the limitation for bringing suits where none previously existed, as well as shorten the time within which suits to enforce existing causes of action may be commenced, provided in each case a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of the suit before the bar takes effect."

Whether the former decision was conclusive of the constitutionality of the statute or not, there can be no doubt of its validity, and under repeated decisions the interest of the defendant in the premises after her purchase was only such as the certificate of purchase gave to her. There was a valid and binding decree of foreclosure, but it did not constitute color of title. A decree of strict foreclosure is color of title, because it purports to vest title. (Chickering *v.* Failes, 26 Ill. 507.) But this decree did not purport to vest the title in the defendant. The certificate of purchase was not color of title for the same reason. The foreclosure was not abortive in any respect, but a sale was regularly made and approved by the court and a certificate of purchase was issued and delivered to the defendant, which became void under the provisions of the statute through her
394 neglect. When the certificate became void she ceased to have any interest whatever in the premises or any right to the possession.

The judgment of the circuit court is affirmed.

Judgment affirmed.

Mr. Justice WILKIN, dissenting:

It is a rule of universal application that where a mortgagor, after foreclosure and sale, allows the time of redemption fixed by the statute and decree of foreclosure to expire without justifiable excuse, failing to make redemption his rights are forever gone. In Stephens *v.* Illinois Mutual Fire Ins. Co. 43 Ill. 327, the question being

whether a mortgagor had an insurable interest in the mortgaged property after a decree of foreclosure and sale, we said (p. 331): "At the time of the fire, then, the position of Stephens was substantially that of a mortgagor with a right to redeem. * * * That in this position he would have had a substantial, insurable interest does not admit of doubt. His estate as mortgagor would not have been lost until the expiration of his right to redeem. In this State the purchaser under a sheriff's sale upon judgment and execution, or at a master's sale on foreclosure of a mortgage, acquires by his purchase no new title to the premises until the period of redemption has passed and he is entitled to a deed. His deed will relate back, it is true, to the beginning of his lien in order to cut off intervening encumbrances, but it will not carry back the absolute divestiture of title, as is evident from the fact that neither judgment debtor nor mortgagor can be called to account for rents and profits. His title becomes absolute only when his right to a deed accrues. If it is a sale under a decree of foreclosure, the mortgagor still has the estate of a mortgagor, with this qualification: that the amount and time of redemption have become absolutely fixed by the decree and sale, *and his estate will be absolutely divested if he fails to redeem within the allotted time.*" Jones, in his work on Mortgages, (vol. 2, sec. 1661,) lays down the same doctrine speaking of the rights of the parties after sale, and says: "The mortgagor still has the estate of a mortgagor, with this qualification: that the amount and time of redemption have become absolutely fixed by the decree of sale, and his estate will be absolutely divested if he fails to redeem within the allotted time."

Therefore, upon the expiration of the time of redemption, the rights of McCune as mortgagor, and of Prettyman, his grantee,
395 were forever barred and foreclosed, appellee was in the exclusive possession of the premises, and had been for several months. Whether that possession, during the period of redemption, was so far by the acquiescence of the mortgagor or his grantee as to be lawful or not, there can be no serious question that after the expiration of the time for redemption she was the owner of the premises and entitled to the possession thereof, and, upon application to the master, entitled to a deed; and during the running of the period of five years in which she might lawfully have obtained a deed there can be no serious claim that any right or title remained in the mortgagor, or his grantee, Prettyman. It is true that by failing to take a deed within the five years her right to do so became barred under the statute of 1872, but the question now is, Did the mortgagor, by that failure, become re-invested with the title, and if so, upon what principle did he do so? Manifestly, the statute of 1872, as one of limitation, affecting only the remedy of Mrs. Bradley to obtain a deed, could not operate to vest the title in any one else. To hold that it could would be to defeat the act upon the ground of its unconstitutionality. (Ryhimer *v.* Frank, 105 Ill. 326.) Of course, there can be no two views as to the law applicable to the rights of a mortgagor where the mortgage debt has been paid or extinguished

by lapse of time, in the absence of the foreclosure of his rights. In such case the title unquestionably reverts to him. But that is not the position occupied by the plaintiff in this case, whose grantor had been forever foreclosed and barred, and I am unable to perceive how it can be fairly said the appellant is without title because she failed to take a master's deed, and at the same time maintain that the mortgagor retained the title notwithstanding his failure to exercise the right to redeem. If by that failure his estate was "absolutely divested," (Stephens *v.* Illinois Mutual Fire Ins. Co. *supra*, and Jones on Mortgages, *supra*,) it ought not to be said that the legal title remained in him as against the defendant in possession.

It is a rule always applied in actions of ejectment, that plaintiff must recover, if at all, upon the strength of his own title, and not upon the weakness of his adversary. "The person who is in the actual and peaceable possession of land will be deemed to be rightfully in possession, and the burden of proof is upon him who would dispute that possessory title." (Fitzgerald *v.* Quinn, 165 Ill. 354, and cases cited.) "Prior possession alone is evidence of a fee, and although the lowest, until rebutted by a higher it must pre-
396 vail." (Keith *v.* Keith, 104 Ill. 397, and cases cited. See also Harland *v.* Eastman, 119 Ill. 26.) This principle is so elementary that cases need scarcely be cited in support of it, and counsel must agree that if neither party has shown title to the premises in controversy, the possession of appellee cannot be taken from her and given to appellant.

I am aware that language was used in the opinions in the cases of Peterson *v.* Emmerson, 135 Ill., 55, and Seeberger *v.* Weinberg, 151 *id.* 369, that upon the failure to take a deed within the five year limitation the title is to be treated as being in the mortgagor. But the question was not involved in either of the cases. What was said on that question may, and I think should, be treated as mere *obiter*. It is not shown, nor is any attempt there made to show, how the legal title, after the failure to redeem, got back in the mortgagor, his grantees or heirs.

I have carefully sought for, but failed to find, authority to support the position that the mere failure of a purchaser at an execution or judicial sale to take a deed within the time limited by law operates to re-vest the title in the judgment debtor, or, in case of a foreclosure sale, in the mortgagor; nor can I perceive upon what principle a mere statute of limitations can be given that effect. My view is, that plaintiff below failed to show title in himself, and that the defendant, being in peaceable possession of the premises, has such a possessory title as ought to protect her against him, or any one else without title seeking to oust her. In other words, the plaintiff could recover only upon the strength of the title in himself, and not upon the mere showing that the defendant in possession had no title. No one denies that every equity in the case is with her.

It may be said this conclusion leaves the appellee in possession of

the property without title and without the right to acquire title, and hence would result in the anomaly of holding no one to be vested with or entitled to the title. If this were admitted it would furnish no sufficient reason for holding that the plaintiff below could recover in this action. It does not follow from what we have said that right to the legal title is in no one, although appellee is barred of all right to a master's deed and although her rights as mortgagee have been extinguished. A court of chancery might, I think, on a proper bill, upon the facts in this record, decree the title in
397 her. It is only necessary, however, in this action, to hold that the plaintiff has failed to make out his case. I think the judgment of the circuit court should be reversed.

Mr. Justice BOGGS, dissenting:

I also dissent from the opinion of the majority of the court. The statutory enactment limiting the time in which the holder of a certificate of purchase may take a deed to five years after the expiration of the period allowed for redemption, (Rev. Stat. 1874, chap. 77, sec. 30,) must be read and construed in the light of the state of the law on that subject prior to the enactment of the section. "No statute enters a field which was before entirely unoccupied. It either affirms, modifies or repeals some portion of the previously existing law. In order, therefore, to form a correct estimate of its scope and effect it is necessary to have a thorough understanding of the laws, both common and statutory, which heretofore were applicable to the same subject. Whether the statute affirms the rule of the common law on the same point, or whether it supplements it, supercedes it or displaces it, the legislative enactment must be construed with reference to the common law, for in this way alone is it possible to reach a just appreciation of its purpose and effect." (Black on Interpretation of Laws, sec. 95, p. 233.) The intention of the law-makers may be collected from the cause or necessity of the act, and statutes may be construed contrary to the literal meaning of the words. (Castner *v.* Walrod, 83 Ill. 171.) "It is universally conceded that one of the most efficient means in ascertaining the legislative intent in the adoption of a new statute is to consider it with reference to the state of the law before its adoption, and particularly with reference to the previous legislation on the same subject." (Wright *v.* People, 101 Ill. 126.) In ascertaining the real meaning of a statute we are not confined to the words, but may look to the prior law. Wabash, St. Louis and Pacific Railway Co. *v.* Binkert, 106 Ill. 298; Catlett *v.* Young, 143 *id.* 74.

What, then, was the state of the law with reference to the right of the holder of a certificate of purchase to take out a deed when said section 30 of chapter 77 was adopted? The section was enacted at the session of the General Assembly in the year 1872. In the case of Rucker *v.* Dooley, 49 Ill. 377, decided in this court in the year 1868, we were called upon to determine as to the efficacy of
398 a certificate of purchase which had been issued at a sale made in 1838 and on which no application had been made for a

deed until 1868, a period of thirty years. During that period the land had been conveyed by holders of adverse title and the holder of the certificate of purchase had never been in possession. We there said (p. 380): "The applicant insists that there was no time limited within which the holder of a certificate of purchase was required to take out a deed after he became entitled to it. There is, it is admitted, no express legislation on this subject, but there are well established principles of law, quite as potential as positive legislation, in the absence of legislation upon the subject. Secret liens, such as the certificate of purchase may justly be considered, no publicity being given to them by recording them, are not favored in law, and are not usually enforced to the overthrow of rights honestly acquired without any notice of such liens. The analogies of the law must be considered with reference to appellant's proposition. By statute a judgment is a lien upon land for seven years, and then, only, when an execution has been taken out within a year. * * * Pursuing, in some degree, this same analogy, and for the protection of purchasers for a valuable consideration, without notice of any lien, from the judgment debtor and those claiming under him, we should be inclined to hold, after the lapse of twenty years, being the longest time of limitation known to our laws, a sheriff's deed should not be executed to the holder of a certificate of purchase, not under legal disabilities, on the application of the holder to the sheriff, nor by any rule or order of court upon him for such purpose; that such lapse of time shall be considered an inseperable bar to its execution. If the application for a deed be made after the eight years and three months have elapsed, and within twenty years, the same must be made through the proper court by a rule upon the sheriff to show cause and on notice to parties interested, when the record should show the existence of intermediate purchasers from the judgment debtor, or shall otherwise appear, of the particular lot or tract of land described in the certificate. Although the statute requires the sheriff, on presentation of the certificate of purchase by the holder thereof, to make a deed to such holder if the land be not redeemed, it is in the spirit of this
399 enactment that such presentation and demand for a deed shall be made within a reasonable time, and that reasonable time ought to be, and must be, considered as the time in which the judgment is a lien, plus the fifteen months allowed for redemption. After that time the deed must be sought through the court where the judgment rests and from which the execution issued, and the action of the court on the application must depend on the circumstances of each case."

Within about three years after the rendition of this decision the General Assembly adopted said section 30, fixing five years as the period within which a deed should be taken by the holder of the certificate of purchase. The object and purpose of the enactment is too manifest to be in doubt. It was enacted in view of the holding of this court in Rucker *v.* Dooley, *supra*, that the holder of a certificate of purchase who had not entered into possession of the lands

should present the same and receive a deed within a reasonable time, and that the time in which a judgment is a lien, viz., seven years plus the fifteen months allowed for redemption from the same, should be deemed a reasonable time, and that after that time a deed could only be had on application to a court, upon notice to those in possession of the land, and such application should be determined by the court in view of the circumstances of the case. The principle of this decision is, that the holder of a certificate of purchase, by failing to apply for and obtain a deed within the period of seven years, should be deemed guilty of *laches*, and for that reason denied the right to a deed if against the rights and interests of other parties in possession. It was then, and still remains, a fundamental rule that *laches* is not to be imputed to one who is in the peaceable possession of land. (Mills *v.* Lockwood, 42 Ill. 112; Dorman *v.* Dorman, 187 *id.* 154; Wilson *v.* Byers, 77 *id.* 76; Boyd *v.* Boyd, 163 *id.* 611; Beck Lumber Co. *v.* Rupp, 188 *id.* 562.) The possession is notice of the rights of the occupant, and he need not assert his right until occasion arises for him to do so. (Parker *v.* Shannon 137 Ill. 376.) The doctrine of *laches* in respect of the assertion of the ownership of land can only be invoked by one in possession against one out of possession. (Bush *v.* Stantley, 122 Ill. 406.) If the purchaser had obtained possession of the land no rule of reason or justice would have justified a decision that mere efflux of time should operate to deprive him of the right to the legal title, for his possession was notice to every one of his rights to a deed, for *laches* could not be imputed to one in possession.

400 The rule announced in Rucker *v.* Dooley, *supra*, therefore had no application to fix the time in which the holder of a certificate of purchase who had obtained and retained possession of the land should be denied the right to demand a deed on the certificate. The law did not impute *laches* to a purchaser in possession and did not visit upon him the loss of any right because of his failure to take the evidence of title to land of which he had the possession and full beneficial enjoyment. The rule of law which was in force at the time of the adoption of said section 30 fixed a time within which a purchaser of land subject to redemption should, as against the possessor, obtain a deed, and denied him a deed on the ground of *laches* if he failed to obtain a deed within seven years after he became entitled to demand and receive the same. As is said by Mr. Black in his work on Judgments, no statute enters a field which is entirely unoccupied. It either affirms, modifies or repeals some portion of the previously existing law. Said section 30 did not affirm or repeal the existing rule of law, but only modified it. The section was enacted in view of the state of the law and for the purpose of reducing the time fixed by this court in which the imputation of *laches* should become complete, from seven years to five years, but it was not intended to apply to the case of a party who had, under the sale, been allowed to enter into the possession of the land, and who, by retaining possession thereof, had given the world notice of his rights to a deed and against whom there could be no imputation

of *laches*. It modified the law as announced in Rucker *v.* Dooley, *supra*, by reducing the time in which a purchaser at a judicial sale to whom *laches* could be imputed, should be allowed to take out a deed under such sale. It must be construed with reference to the prior existing law, and given application only to that class of cases to which the existing law applied. As was said in Arthur *v.* Bonham, 10 Mod. 148, (cited with approval in Black on Interpretation of Laws): "Again, the common law must be allowed to stand unaltered as far as is consistent with a reasonable interpretation of the new law. 'The general rule in the exposition of all acts of Parliament is this: that in all doubtful matters and where the expression is in general terms, they are to receive such a construction as may be agreeable to the rules of the common law in case of that nature, for statutes are not presumed to make any alteration in the common law further or otherwise than the act does expressly
401 declare, and therefore in all general matters the law presumes the act did not intend to make any alteration, for if the Parliament had that design they would have expressed it in the act.'"

It is entirely consistent with the new act to give it application only to purchasers pure and simple,—those who have only such rights as grew out of the acceptance of their bids at the sale. The evil designed to be remedied by the new act was to shorten the time in which a purchaser who had but the bare right of the highest bidder should be allowed to take a deed and oust the party in possession of the land. There was no legislative intent to establish a rule as to a purchaser who had entered into possession and had neglected to take out a deed, and whose neglect had not and could not injure any one, and whose neglect did not justify the imputation of *laches*. That the enactment designed merely to shorten the time in which a purchaser should be allowed to oust the occupant of premises which had been sold at a judicial sale, and should not be used to perpetrate an indefensible wrong against one who, under the purchase, had, as here, occupied the premises for so many years, was clearly foreign to the legislative intent. The established rules for construing statutes, as well as every dictate of natural justice, demand said section 30 shall not be deemed to apply to the case at bar.

While, as a general rule, legal titles prevail in ejectment, still ejectment cannot be maintained against one who is in the lawful and rightful possession of land. (Stow *v.* Russell, 36 Ill. 36; Sands *v.* Wacaser, 149 *id.* 530.) In those cases and in many other cases cited in Sands *v.* Wacaser, the rule is established that facts which disprove that the defendant in an ejectment suit unlawfully withholds premises from the possession from the plaintiff, constitute a legal defense to the action.

In my opinion the judgment ousting the appellant from the possession of these lands should be reversed.

Mr. Justice HAND specially concurring:

I agree that the legal title is in appellee. I am of the opinion, however, that the equitable estate—the full beneficial interest—in the land is in appellant, and that she, being in possession, a court of chancery may protect her equitable interest and possession by enjoining the prosecution of this ejectment suit, and I do not agree to this opinion so far as it holds that the appellant has no equitable interest in said land.

402 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, clerk of the supreme court, of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this fifth day of March, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, August 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

403 Be it remembered, that afterwards, to-wit: on the fourth day of March A. D. 1903, there was filed in the office of the clerk of said court a certain petition for writ of error, order allowing the same, and bond, which said petition, order and bond are in the words and figures following, viz:

In the Supreme Court of the United States, to the October Term, 1903.

LYDIA BRADLEY, Plaintiff in Error, } No.—. Ejectment. Error
vs. } to the Supreme Court of
H. W. LIGHTCAP. } Illinois.

Petition for Writ of Error.

To the Honorable Benjamin D. Magruder, chief justice of the supreme court of Illinois:

The petition of Lydia Bradley respectfully shows that on the 18th day of February, A. D. 1903, the supreme court of Illinois rendered a judgment against your petitioner in a certain cause wherein said H. W. Lightcap was plaintiff appellee and your petitioner was defendant appellant, by which judgment said honorable

supreme court of Illinois did find, order and adjudge in affirmance of the certain judgment of the circuit court of Illinois in
494 and for Fulton county, Illinois, in a certain action of ejectment that the said H. W. Lighthall, plaintiff and appellee in said State courts, was the owner of and entitled to certain lands described in the pleadings and evidence set forth in the transcript of record of said cause submitted herewith, and that said Lighthall should have and recover of and from your petitioner the right of possession and actual possession of said lands, together with the costs of said suit, as will appear by reference to the transcript of record and proceedings in said cause submitted herewith, and that said supreme court of Illinois is the highest court of said State in which a decision in said suit could be had;

And your petitioner claims the right to review said judgment in the Supreme Court of the United States by writ of error, under the Constitution of the United States and especially under article I, section 10, and article 14, section 1, of said Constitution and under sections 709, 997 and 700 of the Revised Statutes of the United States;

And your petitioner shows among others the following errors and grounds therefor, to wit:

First. That in said suit your petitioner drew in question and denied the validity of a certain statute of the State of Illinois, under and by virtue of which said H. W. Lighthall, plaintiff and
495 appellee in said State courts and here now made defendant in error herein, claimed to be entitled to said lands and to be entitled to said judgment, said statute being section 20 of the act of the General Assembly of Illinois entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree." Approved March 22, 1872, in force July 1, 1872; also known as section 20 of chapter 77 of the Revised Statutes of Illinois, according to the revision of 1874;

And petitioner shows that she denied the validity of said statute and denied the right of the said H. W. Lighthall to the judgment obtained in said suit on the ground that said statute was and is repugnant to the Constitution and laws of the United States and that said statute was particularly repugnant to and contrary to section 10 of article I of said constitution, and on the further ground that said statute was repugnant to and in contravention of section 1 of article 14 of said constitution, and the decision in said suit was in favor of the validity of said statute.

Second. Petitioner further shows that in said suit she drew in question and denied the validity of the authority exercised under the State of Illinois and under said last mentioned statute
496 of the State of Illinois on the ground that said authority was repugnant to and in violation of the Constitution and laws of the United States, and especially was repugnant to and in violation of section 10 of article I of the Constitution of the United States and was repugnant to and in violation of section 1 of article 14 of

the Constitution of the United States and the decision is and was was in favor of the validity of said authority;

And petitioner shows that said judgment and decision in favor of the validity of the said statute and authority was decisive against to the Constitution and laws of the United States and to the above mentioned articles and section thereof.

Third. That there exists in this case a controversy necessarily involving and drawing in question the construction of the Constitution of the United States, particularly section [illegible] thereof as applicable to a certain statute of the State of Illinois, to-wit, section 89, chapter 77, Revised Statutes of Illinois.

Fourth. There exists in this case a controversy necessarily involving and drawing in question the construction of said section of the Constitution of the United States as applicable to the said statute of the State of Illinois as the same was construed and applied by the said court.

Fifth. There exists in this case a controversy necessarily involving and drawing in question the construction of the Constitution of the United States, particularly article [illegible], section 1 thereof, as applicable to the said statute of the State of Illinois.

Sixth. There exists in this case a controversy necessarily involving and drawing in question the construction of the Constitution of the United States, particularly article [illegible] section 1 thereof as applicable to the said statute of the State of Illinois as the same was construed and applied by the said court.

Seventh. There exists in this case a controversy necessarily involving and drawing in question the construction of the statutes of the United States, particularly section 1979 United States Revised Statutes as applicable to the said statute of the State of Illinois.

Eighth. There exists in this case a controversy necessarily involving and drawing in question the construction of the statutes of the United States, particularly section 1979 United States Revised Statutes, as applicable to the said statute of the State of Illinois as the same was construed and applied by the said court.

Ninth. There exists in this case a controversy necessarily involving and drawing in question the construction of the Constitution of the United States, particularly section [illegible] article 1 thereof as applicable to the charge of [illegible] upon the use of mortgage contracts such obligations as the face of your petitioner's mortgage contract by which her homestead thereunder was materially impaired.

Tenth. That in said suit the petitioner claimed and duly [illegible] her title, right, privilege and immunity to subscribe properties [illegible] in the pleadings and evidence in the cause under said Constitution and laws and under article 1, section 10 of said Constitution, and under article 14, section 1 of said Constitution and under section 1979 of the Revised Statutes of the United States and [illegible] her said title and right as above under said Constitution and laws

of the United States and said provisions thereof from any act or deprivation by authority of said State under said statute thereof, and that under said Constitution and laws of United States and said provisions thereof, she has immunity in her said property from said acts and authority exercised under said State.

Eleventh. Upon all of said contentions and questions the decision of this court was in favor of the validity of said statute of said State of Illinois, and of said authority thereunder and of said change of judicial construction of mortgage contract, as applied to the circumstances of this case.

409 All of which appears by the transcript of the record of the proceedings in said cause which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States, and for citation and for supersedeas and for reversal of said judgment and decision of the honorable supreme court of Illinois. And your petitioner herewith submits an assignment of errors in said judgment and decision of the honorable supreme court of Illinois, and in the record and proceedings in said cause, and your petitioner further prays that said writ of error may be made a supersedeas, and offers to give bond in such sum and with such sureties as your honor shall approve.

And your petitioner further prays that a citation in due form of law may issue, requiring the appellee to appear in the Supreme Court of the United States and then and there make answer to the assignments of error made by your petitioner upon the record of proceedings in this cause.

And your petitioner will ever pray, etc.

JOHN S. MILLER,
MERRITT STARR,
W. W. HAMMOND,
Attorneys for Petitioner.

LYDIA BRADLEY,
By MERRITT STARR,
Her Attorney.

410 *Copy of Order.*

In the Supreme Court of the United States, to the October Term, 1903.

LYDIA BRADLEY, Plaintiff in Error, *vs.* H. W. LIGHTCAP. } No. —. Ejectment. Error to the Supreme Court of Illinois.

The foregoing petition and record of said cause in this court having been considered, it is ordered

That a writ of error be allowed to said court; and that the same be made a supersedeas, the bond therefor in the sum of twenty-five

thousand ($25000.00) dollars herewith presented being hereby approved. Sureties being Geo. W. Scott and Harry A. Hammond.

In witness whereof, I have hereunto set my hand this 27th day of February A. D. 1903.

(Signed) BENJAMIN D. MAGRUDER,
Chief Justice of Supreme Court of Illinois.

411 (Copy.)

Know all men by these presents that we Lydia Bradley, of the county of Peoria and State of Illinois, as principal and George W. Scott and Harry A. Hammond, of the county of Stark and State of Illinois, as sureties, are held and firmly bound unto H. W. Lightcap in the penal sum of twenty-five thousand ($25,000.00) dollars, for the payment of which, well and truly to be made we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty seventh (27th) day of February, A. D. 1903.

The condition of the above obligation is such that whereas the said H. W. Lightcap did on the 18th day of February, A. D. 1903, at a term of the supreme court of the State of Illinois then being holden at Springfield, in said State, obtain a judgment confirming the judgment of the circuit court of Fulton county in said State of Illinois in a certain action in ejectment wherein said H. W. Lightcap was plaintiff and Lydia Bradley defendant, and for costs of said suit, to review which judgment the said Lydia Bradley has prayed and obtained a writ of error to the supreme court of the State of Illinois,

Now if the said Lydia Bradley shall duly prosecute said writ of error and shall mor-over pay the amount of said judgment together with all costs, interest and damages accruing to said H. W. Lightcap by reason of such writ of error in case said judgment shall be affirmed, then the above obligation to be null and void, otherwise to remain in full force and virtue.

(Signed) LYDIA BRADLEY. [SEAL.]
(") GEORGE W. SCOTT. [SEAL.]
(") HARRY A. HAMMOND. [SEAL.]

Approved by
(Signed) BENJ. D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

412 STATE OF ILLINOIS, } ss:
Stark County, }

George W. Scott and Harry A. Hammond being each duly sworn on oath state, that they are residents of the county and State aforesaid, and that they are each of them the owners and possessors of

property, in their own names and rights, free from incumbrance, and liable to execution, of the fair and reasonable value of not less than twenty five thousand dollars ($25,000) in real estate.

(Signed) GEORGE W. SCOTT.
HARRY A. HAMMOND.

Subscribed and sworn to before me, this 25th day of February, A. D. 1903.

(Signed) GEORGE S. RAKESTRAW,
[NOTARIAL SEAL.] *Notary Public.*

413 STATE OF ILLINOIS, } ss:
County of Peoria, }

I, Clara E. Comstock, a notary public in and for the said county, in the State aforesaid, do hereby certify, that Lydia Bradley, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

[NOTARIAL SEAL.]

Given under my hand and notarial seal this 26th day of February A. D. 1903.

(Signed) CLARA E. COMSTOCK,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Stark, }

I, George S. Rakestraw, a notary public in and for the said county, in the State aforesaid, do hereby certify that George W. Scott and Harry A. Hammond, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

[NOTARIAL SEAL.]

Given under my hand and notarial seal this 27 day of February, A. D. 1903.

(Signed) GEORGE S. RAKESTRAW,
Notary Public.

414 In the Supreme Court of the United States, to the October Term, 1903.

LYDIA BRADLEY, Plaintiff in Error, vs. H. W. LIGHTCAP. } No. —. Ejectment. Error to the Supreme Court of Illinois.

Assignment of Errors.

And now comes Lydia Bradley, the petitioner and plaintiff in error herein, appellant in the supreme court of Illinois, and defendant in the circuit court of Illinois in and for Fulton county, Illinois, by John S. Miller and Merritt Starr and William W. Hammond, her attorneys, and shows that in the record and proceedings and in the rendering of the judgment of the supreme court of Illinois in said cause, and in the record and proceedings set forth in the transcript submitted herewith, there is manifest error in this, to wit:—

1. That said supreme court of Illinois erred in rendering decision in favor of the validity of the statute of Illinois known as section 30 of an act of the General Assembly of Illinois entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of
415 real estate sold under execution or decree." Approved March 22, 1872, in force July 1, 1872; also known as section 30 of chapter 77 of the Revised Statutes of Illinois, according to the revision of 1874;

And in not holding that said statute was repugnant to the Constitution of the United States, and to section 10 of article 1 thereof;

And in not holding that said statute was void.

2. That said supreme court of Illinois erred in rendering decision in favor of the validity of the statute of Illinois known as section 30 of an act of the General Assembly of Illinois entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree." Approved March 22, 1872, in force July 1, 1872; also known as section 30 of chapter 77 of the Revised Statutes of Illinois, according to the revision of 1874;

And in not holding that said statute was repugnant to the Constitution of the United States, and to section 1 of article 14 thereof, also known as the 14th amendment to the Constitution of the United States;

And in not holding that said statute was void.

3. That said supreme court of Illinois erred in rendering decision in favor of the validity of the statute of Illinois known as
416 section 30 of an act of the General Assembly of Illinois entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree." Approved March 22, 1872, in force July 1, 1872; also known as section

30 of chapter 77 of the Revised Statutes of Illinois, according to the revision of 1874;

And in not holding that said statute of Illinois was repugnant to the laws of the United States and to section 1979 of the Revised Statutes of the United States;

And in not holding that said statute of Illinois was void.

4. That said supreme court of Illinois erred in rendering decision and judgment in favor of the validity of the authority exercised under the State of Illinois in said cause, and by virtue of which authority said H. W. Lightcap recovered said judgment against this petitioner and plaintiff in error;

And in not holding that said authority was repugnant to the Constitution of the United States and to section 10 of article 1 thereof;

And in not holding that said authority was void.

5. That said supreme court of Illinois erred in rendering decision and judgment in favor of the validity of the authority exercised under the State of Illinois in said cause, and by virtue of
417 which authority said H. W. Lightcap recovered said judgment against this petitioner and plaintiff in error;

And in not holding that said authority was repugnant to the Constitution of the United States and to section 1 of article 14 thereof, also known as section 1 of the 14th amendment to the Constitution of the United States;

And in not holding that said authority was void.

6. That said supreme court of Illinois erred in rendering decision and judgment in favor of the validity of the authority exercised under the State of Illinois in said cause, and by virtue of which authority said H. W. Lightcap recovered said judgment against this petitioner and plaintiff in error;

And in not holding that said authority exercised under the State of Illinois and upon which said H. W. Lightcap recovered judgment was repugnant to the laws of the United States and to section 1979 of the Revised Statutes of the United States;

And in not holding that said authority was void.

7. That said supreme court of Illinois erred in not sustaining the claim of this petitioner and plaintiff in error whereby she claimed her title, right, privilege and immunity in and to the properties described in the pleadings and evidence set forth in the record in this cause, under the Constitution and laws of the United States and under section 10 of article 1 and section 1 of article 14 of said
418 Constitution and under section 1979 of the Revised Statutes of the United States; and her claim that her said title and right are secure under said Constitution and laws of the United States and said provisions thereof, from any act or deprivation by authority of said State under said statute thereof, and in not sustaining her claim that under said Constitution and laws of the United States and said provisions thereof she has immunity in her said property from said acts and authority exercised under said State.

8. The honorable supreme court of Illinois erred in not deciding

and holding that there exists in this cause a controversy necessarily involving the construction of the Constitution of the United States and particularly section 10 of article 1 thereof as applicable to the certain statute of Illinois hereinbefore cited, and in not deciding said controversy in favor of the contention of this petitioner and plaintiff in error, and in not holding said statute of Illinois void.

9. The honorable supreme court of Illinois erred in not holding and deciding that there exists in this cause a controversy necessarily involving and drawing in question the construction of said section of the Constitution of the United States as applicable to the said statute of the State of Illinois as the same was construed and applied by the trial court, and in not deciding said contro-
419 versy in favor of the contention of this petitioner and plaintiff in error, and in not holding said statute of Illinois void.

10. The honorable supreme court of Illinois erred in not holding that there exists in this cause a controversy necessarily involving and drawing in question the construction of the Constitution of the United States of America, and particularly section 1 of article 14 thereof, also known as section 1 of the 14th amendment to the Constitution of the United States, as applicable to said statute of the State of Illinois, and in not deciding said controversy in favor of the contention of this petitioner and plaintiff in error, and in not holding said statute of Illinois void.

11. The honorable supreme court of Illinois erred in not holding and deciding that there exists in this cause a controversy necessarily involving and drawing in question the construction of the Constitution of the United States of America, particularly section 1 of article 14 thereto, also known as section 1 of the 14th amendment thereof, as applicable to the said statute of the State of Illinois as the same was construed and applied by the trial court, and in not deciding said controversy in favor of the contention of this petitioner and plaintiff in error, and in not holding said statute of Illinois void.

420 12. The honorable supreme court of Illinois erred in not holding and deciding that there exists in this cause a controversy necessarily involving and drawing in question the construction of the statutes of the United States of America, and particularly section 1979 of the Revised Statutes of the United States as applicable to the said statute of the State of Illinois, and in not deciding said controversy in favor of the contention of this petitioner and plaintiff in error, and in not holding said statute of Illinois void.

13. The honorable supreme court of Illinois erred in not holding and deciding that there exists in this cause a controversy necessarily involving and drawing in question the construction of the statutes of the United States of America, and particularly section 1979 of the Revised Statutes of the United States, as applicable to the said statute of the State of Illinois, as the same was construed and applied by the trial court, and in not deciding said controversy in favor of

the contention of this petitioner and plaintiff in error, and in not holding said statute of State of Illinois void.

14. The honorable supreme court of Illinois erred in not holding and deciding that there exists in this cause a controversy necessarily involving and drawing in question the construction of the Constitution of the United States of America and said section 10 of article 1 and said section 1 of article 14 thereof, as applicable
421 to the change of judicial construction of the law of mortgage contracts made by said supreme court of Illinois and said circuit court of Illinois in and for Fulton county, Illinois, subsequent to the date of your petitioner's mortgage contract by which her remedy thereunder was materially impaired.

15. The honorable supreme court of Illinois erred in not sustaining the first assignment of error laid and alleged therein, to wit: that the judgment of the court below was contrary to the law.

16. The honorable supreme court of Illinois erred in not sustaining the second assignment of error laid and alleged therein, to wit: that the judgment of the court below was contrary to the evidence.

17. The honorable supreme court of Illinois erred in not sustaining the third assignment of error laid and alleged therein, to wit: that the judgment of the court below was contrary both to the law and the evidence.

18. The honorable supreme court of Illinois erred in not sustaining the fourth assignment of error laid and alleged therein, to wit: that the court below erred in finding for the plaintiff H. W. Lightcap.

19. The honorable supreme court of Illinois erred in not sustaining the fifth assignment of error laid and alleged, to wit: that the court below erred in refusing to find for the defendant, Lydia Bradley.

422 20. The honorable supreme court of Illinois erred in not sustaining the sixth assignment of error laid and alleged therein, to wit; that the court below erred in refusing to hold as the law the propositions submitted by the defendant. Said propositions are as follows; to wit:

"I. The court holds that section 30, chapter 77, Revised Statutes of Illinois, as construed and applied by the supreme court of the State of Illinois, has the effect of depriving the defendant of her property without due process of law, and is therefore in violation of section 1 of the 14th amendment to the Constitution of the United States, and section 14, article 2, of the constitution of the State of Illinois.

"II. The court holds that ejectment by a mortgagor or his grantee, claiming the bare legal title, cannot be maintained against a mortgagee in possession, after default, where the latter is in the possession of the premises involved, under a certificate of purchase issued to her at said sale, even although the time within which the holder of said certificate of purchase could have procured a deed therefor has expired.

423 "III. That section 30, chapter 77, of the Revised Statutes of Illinois, as construed by the supreme court of the State of

Illinois, is in violation of section 10, of article 1, of the Constitution of the United States, and of section 14, article 2, of the constitution of the State of Illinois, because, as applied to contracts in existence prior to its passage, or rights acquired under such contracts prior to its passage, such construction gives it the effect of impairing the validity of a contract obligation.

"IV. That section 30, of chapter 77, of the Revised Statutes of the State of Illinois, cannot be constitutionally applied to the rights of the defendant, Lydia A. Bradley, as mortgagee in the present case, because it was enacted since the said mortgage was given, and is in conflict with sections 9 and 10 of article 1 of the Constitution of the United States, and section 14 of article 2 of the constitution of the State of Illinois.

V. Section 30 of chapter 77, of the Revised Statutes of Illinois, in so far as it relates to contracts in existence or rights acquired, prior to the time of its passage, is obnoxious to section 10, article
424 1, Constitution of the United States, and section 14, article 2, constitution of the State of Illinois.

"VI. That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, is in violation of article 1, section 10, of the Constitution of the United States.

"VII. That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, to the facts in the present case, violates section 1 of the 14th amendment to the Constitution of the United States.

"VIII. That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, to the facts in the present case, violates section 1, of the 14th amendment to the Constitution of the United States, and also section 1979 of the Revised Statutes of the United States.

"IX. That if McCune or Prettyman failed to redeem said premises under the statute regulating the right of redemption from the
425 sale of mortgaged premises involved herein, within the time provided by law, then the right, title and interest of the said McCune, Prettyman and his grantee, and each of them, would be cut off; and they, or either of them, could not afterwards, as against the defendant, assert affirmatively, under this section, in this action, any purported title which existed in them prior to the expiration of the time allowed for such redemption, for the purpose of reinvesting themselves, or either of them, with the possession of, or title to, said premises, because of the failure of the purchaser at said sale, the original mortgagee, the said Lydia Bradley, to take out, within five years, a deed for said premises based upon said certificate of purchase.

"X. That said section 30 of chapter 77, Revised Statutes of Illinois, should be so construed as to be a statute of repose. That by the elapse of five years from the date of the mortgage sale without the taking out of the deed by the purchaser at said sale, there is no

presumption, either because of such sale or because of such failure so to take out a deed, that the debt is paid. The original mortgagee who went into the possession of said premises for the purpose of protecting herself as such, and who was also the purchaser at said sale, would not, by reason of such failure so to take out said deed within said five years, be thereby deprived of the right to possess and occupy said premises until the payment of the mortgage debt.

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"XI. A mortgagee in a mortgage, or a trustee in a trust deed, has the right, upon condition broken, to enter into and take possession of the mortgaged premises, and to retain and occupy the same until the payment of the debt.

"XII. The court holds that section 30, chapter 77, of the Revised Statutes of the State of Illinois, should not be given such construction as to render the certificate of purchase of the defendant, Lydia A. Bradley, null and void, or to create a presumption that the mortgage debt is paid, or to divest her of her title as mortgagee in possession of said premises.

"XIII. That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, should not be given such a construction as will have the effect of merging the mortgage debt, first, into the decree; second, into the certificate of purchase, which then represented the debt; and thirdly, of divesting the mortagee's title, as mortgagee in possession or otherwise, when the certificate of purchase becomes null and void, as held by the supreme court under the statute.

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"XIV. Section 30, chapter 77, of the Revised Statutes of the State of Illinois should be given such construction in this case that it merely affects the remedy of the said Lydia A. Bradley, defendant herein, and not such rights as she may have under and by the certificate of purchase under said mortgage foreclosure proceeding.

"XV. That the failure of McCune and Prettyman to redeem the premises involved herein from the sale under the decree of foreclosure, within the time provided by law, completely and perpetually divested the said McCune and Prettyman and each of them of all of their right title and interest, in and to said premises; and that they could not thereafter, in this action, as against the defendant, Lydia A. Bradley, as mortgagee in possession of said premises, establish any legal title to said premises, either at common law, or under section 30 of chapter 77, Revised Statutes of the State of Illinois, for the purpose of reinvesting themselves, or either of them, with the possession of said premises, based upon the equity of redemption which existed in them, or either of them, prior to the expiration of the period limited by law within which they could redeem, solely because of the failure of the defendant as purchaser at said sale, to take out within five years, a deed based upon the certificate of purchase issued to her.

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"XVI. The court holds that a mortgagee in possession, after sale of the premises under a decree in foreclosure, and the purchase of

the same by the said mortgagee, and the issuing to her of a certificate of purchase entitling her to a deed at any time after the expiration of 15 months from said sale, and within five years from the date thereof, cannot, after the expiration of said five years, at a time when all right to redeem said premises has expired, be dispossessed of said premises in an action of ejectment by the original mortgagor, or his grantee, as the holder of the legal title, because the said mortgagee, as the purchaser at said sale, has failed to take out a deed based upon her certificate of purchase within the time limited
429 by the statute; for the reason that, being in possession as against the mortgagor and his grantees, she is entitled to retain such possession until her said mortgage is satisfied.

"XVII. The court holds the law to be that the laws which exist at the time and place of the making of a contract enter into it and form a part of it. This embraces alike those laws which affect its validity, construction, discharge and enforcement.

"That at the date of the mortgage of McCune to Johnson, Aug. 13, 1862, the laws of this State in regard to the enforcement of mortgage contracts vested the legal title in the mortgagee upon the failure of the mortgagor to comply with the conditions contained in the mortgage, and at law the mortgagee had a right to sue for and recover the possession of the land itself.

"That the act of defendant in taking peaceable possession of the vacant and unoccupied mortgaged premises was not a trespass, but was within her rights under the mortgage as fixed by the laws of this State then in force and effect, and was not more than the courts would have awarded her if she had sought their aid.
430 "That the possession of defendant was that of mortgagee from that time until she purchased the premises at the master's sale. That no new title was conferred upon her by such purchase, since the certificate of purchase does not purport to convey title, nor did it take away any part of the legal or equitable title theretofore vested in her.

"That after the decree and sale in Bradley *v.* McCune, the mortgagor and his assigns, under the laws as then held and announced by the courts of this State, no longer held the legal title, but an equity of redemption as fixed by the decree of foreclosure.

"That upon the expiration of the period of redemption, Jan. 27, 1881, the equity of redemption of mortgagor and his grantees ceased altogether and thereafter they had no right, title or interest in said premises.

"That defendant thereupon became entitled to a deed from the master in chancery, and being in possession with a right to the title, had a perfect equitable title.

"That the statute of this State relating to taking out deeds upon certificates of purchase, sec. 30, ch. 77, Rev. Stat., Ill., was
431 passed after the date of said McCune mortgage, and cannot be given an effect which would impair the obligation of the mortgage contract. Only such effect can be given to the statute as comports with the constitution of the State and the United States.

If this statute be given an effect which would terminate defendant's right, title and interest in the premises and deprive her of the right to maintain her possession if she failed to take a deed from the master within five years, such effect would amount to an impairment of contract and be obnoxious to the constitutions of this State and the United States. The court holds the effect of said statute is merely to cut off defendant's right to a conveyance from the master leaving her in possession and with the same legal and equitable title she held before the lapse of the five years.

"The court holds further that if defendant maintained her possession by actual residence of her tenants upon said premises for seven years prior to the commencement of this action, and it appears that her equitable title is deducible of record from the United States then plaintiff is barred by sec. 4, ch. 83, Rev. Stat., Ill., from maintaining this action.

432 "XVIII. The court holds the law to be that the laws which exist at the time and place of the making of a contract enter into it and form a part of it. This embraces alike those laws which affect its validity, construction, discharge and enforcement.

"That at the date of the mortgage of McCune to Johnson, Aug. 13, 1862, the laws of this State in regard to enforcement of mortgage contracts vested the legal title in the mortgagee upon the failure of the mortgagor to comply with the conditions contained in the mortgage, and at law the mortgagee had a right to sue for and recover the possession of the land itself.

"That the act of defendant in taking peaceable possession of the vacant and unoccupied mortgaged premises was not a trespass, but was within her rights under the mortgage as fixed by the laws of this State then in force and effect, and was no more than the courts would have awarded her if she had sought their aid.

"That the possession of defendant was that of mortgagee from that time until she purchased the premises at the master's sale.

That no new title was conferred upon her by such purchase,
433 since the certificate of purchase does not purport to convey title nor did it take away any part of the legal or equitable title theretofore vested in her.

"That after the decree and sale in Bradley *v.* McCune, the mortgagor and his assigns, under the laws as then held and announced by the courts of this State, no longer held the legal title, but an equity of redemption as fixed by the decree of foreclosure.

"That upon the expiration of the period of redemption, Jan. 27, 1881, equity of redemption of mortgagor and his grantees ceased altogether and thereafter they had no right, title or interest in said premises, and cannot recover in this action.

"XIX. The court holds that in this action only the legal title can be considered. That by the trust deed of McCune to E. G. Johnson the legal title was, as between them, conveyed to Johnson as security for defendant's notes.

"That when default was made in the payment of said notes the legal title in Johnson, and the equitable title in defendant, as be-

tween them and McCune or his grantee, became absolute. That defendant was then entitled to possession as against McCune or his grantees.

434 "That she had a right to recover possession by ejectment or take possession, peaceably if possible, concurrently with her action to foreclose. That having taken possession of the mortgaged premises, lying vacant and unclaimed, pending foreclosure, defendant entered under equitable title deducible of record from the United States and if she continued in possession of said premises by residence of her tenants for more than seven years prior to the commencement of this action she is entitled to the protection of sec. 4, ch. 83, of the Rev. Stat., of Ill., barring the right of plaintiff to recover in this action.

"That defendant's equitable title under the mortgage became vested upon breach of condition, and if it appears from the evidence that the breach occurred prior to July 1st, 1872, then the defendant had a vested equitable title prior to the enactment of sec. 30, ch. 77, Rev. Stat. Ill., and that statute being a limitation statute affecting remedies only could not operate to divest the equitable title in defendant and cut off the running of the statutory bar under sec. 4, ch. 83, Rev. Stat. Ill.

435 "XX. The court holds that in this action only the legal title can be considered. That by the trust deed of McCune to E. G. Johnson, the legal title was, as between them, conveyed to Johnson as security for defendant's notes.

"That when default was made in the payment of said notes the legal title in Johnson, and the equitable title in defendant, as between them and McCune or his grantees, became absolute. That defendant was then entitled to possession as against McCune or his grantees.

"That she had a right to recover possession by ejectment or take possession, peaceably if possible, concurrently with her action to foreclose.

"That having taken possession before decree she became mortgagee in possession, entitled to hold possession, as against said McCune or his grantees, until payment of said mortgage indebtedness, or redemption of the premises from sale

"That the purchase of the property at the master's sale for a part only of the mortgage debt was not as between defendant and said McCune or his grantees, a payment or satisfaction of the mortgage debt, nor did the sale and certificate of purchase divest or transfer any title.

436 "That a statute of limitations barring recovery upon said mortgage debt or barring the right to a deed under the foreclosure proceedings affects their remedy only, and does not divest rights already acquired under said contracts or proceedings, as actual payment of the indebtedness would. In this sense barring the debt is not equivalent to payment. The debt still exists after the bar is complete.

"The court holds, therefore, that defendant is still in possession

as mortgagee after condition broken and as against McCune or his grantees is entitled to retain possession until said debt is paid.

"XXI. The court holds that as between the mortgagor and mortgagee after condition broken, the legal title is in the latter and he may maintain ejectment.

"That defendant, Lydia Bradley, as *cestui que trust* in the McCune mortgage became vested with equitable title to the premises when default was made in the payment of the mortgage debt.

"That by the decree of foreclosure in Bradley *v.* McCune, her equitable right was confirmed, and McCune and his grantees
437 thereafter had only an equity of redemption.

"That by the master's sale and certificate no change was made in the title, since the certificate did not purport to convey or vest title but only a right to a title after the expiration of the period of redemption.

"That after the expiration of the period of redemption and failure of McCune or his grantees to redeem, their equity of redemption was cut off and they had no further interest in the premises.

"That defendant being then in possession and having a right under her certificate of purchase to a deed conveying the legal title to her, was equitable owner of the premises.

"That sec. 30, ch. 77, Rev. Stat. Ill., being a limitation statute affecting the remedy only cannot divest or terminate the equitable title so vested in defendant, but can only be effective to cut off her right to a conveyance of the legal title.

"That if the equitable title so vested in defendant is deducible of record from the United States, and it appears that she was in actual possession by residence of her tenants upon said premises
438 more than seven years prior to the commencement of this suit, then plaintiff is barred by sec. 4, ch. 83, Rev. Stat. Ill., from maintaining his action.

"XXII. The court holds that sec. 30, ch. 77, Rev. Stat. of Ill. is a limitation statute materially impairing the legal remedies provided for the enforcement of mortgage contracts, and that it cannot be applied to such contracts executed prior to its enactment without conflicting with sec. 10, art. 1, Constitution of the United States and sec. 14, art. 2, constitution of Illinois.

"That defendant's certificate of purchase derived under foreclosure of the trust deed of McCune to Johnson dated Aug. 13, 1868, did not become null and void under said statute at the end of five years from the expiration of the period of redemption, but her rights continued to be as fixed by the laws of this State in force at the date said mortgage was given.

"That the law of this State at the date of said mortgage was that after condition broken the mortgagee had absolute title and right to possession, while the mortgagor had only an equity of redemption. That after foreclosure and failure to redeem the
439 mortgagor's title was extinguished.

"The court therefore holds that plaintiff's right, title, interest and equity of redemption were extinguished on the 27th day

of January, 1881, when he or his grantor failed to redeem from the sale to defendant, and he cannot recover.

"XXIII. That by virtue of the decree rendered in the mortgage foreclosure proceedings, introduced in evidence herein, and the sale thereunder, and a failure to redeem therefrom within the statutory period, all the rtght, title and interest of said McCune, Prettyman and his grantee, in said premises, was cut off, destroyed and terminated, and in this proceeding they or either of them cannot affirmatively assert such alleged title against the defendant, Lydia A. Bradley.

"Which said propositions of law and each of them were refused by the court, to which ruling of the court counsel for defendant then and there excepted."

Said propositions are set out in full in the transcript of record of said supreme court of Illinois on pages 343 to 355 inclusive thereof.

440 21. The honorable supreme court of Illinois erred in not sustaining the seventh assignment of error laid and alleged therein, to wit: That the court below erred in refusing to hold as law the propositions I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII submitted to it by the defendant (this petitioner and plaintiff in error), and in refusing each of the same. (Said propositions are set out in the last foregoing assignment of error.)

22. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. I submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"I. The court holds that section 30, chapter 77, Revised Statutes of Illinois, as construed and applied by the supreme court of the State of Illinois, has the effect of depriving the defendant of her property without due process of law, and is therefore in violation of section 1 of the 14th amendment to the Constitution of the United States, and section 14, article 2, of the constitution of the State of Illinois."

441 23. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. III submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"III. That section 30, chapter 77, of the Revised Statutes of Illinois, as construed by the supreme court of the State of Illinois, is in violation of section 10, of article 1, of the Constitution of the United States, and of section 14, article 2, of the constitution of the State of Illinois, because, as applied to contracts in existence prior to its passage, or rights acquired under such contracts prior to its passage, such construction gives it the effect of impairing the validity of a contract obligation."

24. The honorable supreme court of Illinois erred in affirming the

action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. IV submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"IV. That section 30, of chapter 77, of the Revised Statutes of the State of Illinois, cannot be constitutionally applied to the
442 rights of the defendant, Lydia A. Bradley, as mortgagee in the present case, because it was enacted since the said mortgage was given, and is in conflict with sections 9 and 10 of article 1 of the Constitution of the United States, and section 14 of article 2 of the constitution of the State of Illinois."

25. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. V submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"V. Section 30 of chapter 77, of the Revised Statutes of Illinois, in so far as it relates to contracts in existence or rights acquired, prior to the time of its passage, is obnoxious to section 10, article 1, Constitution of the United States, and section 14, article 2, constitution of the State of Illinois."

26. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. VI submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

443 "VI. That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, is in violation of article 1, section 10, of the Constitution of the United States."

27. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. VII submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"VII. That section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, to the facts in the present case, violates section 1 of the 14th amendment to the Constitution of the United States."

28. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county, in refusing to hold as the law proposition No. VIII submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"VIII. That section 30 of chapter 77 of the Revised Stat-
444 utes of the State of Illinois, as construed and applied by the supreme court of the State of Illinois, to the facts in the present case, violates section 1, of the 14th amendment to the Constitution of the United States, and also section 1979 of the Revised Statutes of the United States."

29. The honorable supreme court of Illinois erred in affirming the action of the circuit court of Illinois in and for Fulton county in refusing to hold as the law proposition XXII submitted to said circuit court of Illinois in and for Fulton county, Illinois, which proposition is as follows:

"XXII. The court holds that sec. 30, ch. 77, Rev. Stat. of Ill. is a limitation statute materially impairing the legal remedies provided for the enforcement of mortgage contracts, and that it cannot be applied to such contracts executed prior to its enactment without conflicting with sec. 10, art. 1, Constitution of the United States and sec. 14, art. 2, constitution of Illinois.

"That defendant's certificate of purchase derived under foreclosure of the trust deed of McCune to Johnson dated Aug. 13, 1868, did not become null and void under said statute at the end of five
445 years from the expiration of the period of redemption, but her rights continued to be as fixed by the laws of this State in force at the date said mortgage was given.

"That the law of this State at the date of said mortgage was that after condition broken the mortgagee had absolute title and right to possession, while the mortgagor had only an equity of redemption. That after foreclosure and failure to redeem the mortgagor's title was extinguished.

"The court therefore holds that plaintiff's right, title, interest and equity of redemption were extinguished on the 27th day of January, 1881, when he or his grantor failed to redeem from the sale to defendant, and he cannot recover."

30. The honorable supreme court of Illinois erred in not sustaining the eighth assignment of error laid and alleged therein, to wit: that the court below erred in refusing to sustain the demurrer interposed to the plaintiff's evidence by the defendant. (Said demurrer to the plaintiff's evidence is preserved and set out in the transcript of record on pages 202 to 204 thereof.)

31. The honorable supreme court of Illinois erred in not sustaining the ninth assignment of error laid and alleged therein, to
446 wit: that the court below has erred in refusing to grant the defendant a new trial, and in overruling the defendant's motion therefor.

Said motion for new trial is contained in the transcript of record at pages 355 to 359 inclusive thereof and is in words and figures as follows:

"Now comes defendant by W. W. Hammond and Chiperfield & Chiperfield, her attorneys, and moves the court for a new trial herein upon the following grounds:

"1. Because upon the trial of said cause, the court refused to admit proper evidence offered upon the part of defendant.

"2. Because upon said trial, the court permitted, against the objection of the defendant, improper evidence to be introduced upon the part of the plaintiff.

"3. Because the court erred in striking from the files the second plea filed by the defendant herein.

"4. Because the evidence is insufficient to support the findings of the court.

"5. Because it appears from the evidence that the title of plaintiff's grantor was divested, as between him and the mortgagee, upon breach of condition of the McCune mortgage, and by final
447 decree in Bradley *v.* McCune he was decreed to have thereafter, as between him and defendant, only an equity of redemption, and said decree, which was final as between the said parties, further ordered that unless redemption was made according to the said decree and the statutes of this State within fifteen months from the date of sale shown by the certificate of purchase offered in evidence, the title of plaintiff's grantor, and all persons holding under him, should be forever barred and foreclosed from all equity of redemption and claim, of, in and to the mortgaged premises, and there is no evidence offered tending to show that redemption was made from said sale in accordance with such decree, or that said decree has ever been reversed or set aside or modified, but so far as the evidence shows the same is still in full force and effect as between the parties, and plaintiff's title is barred as therein provided.

"6. Because the statute of limitations, sec. 30, ch. 77, Rev. Stat. of Ill., passed after the execution of said McCune mortgage, materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 1, sec.
448 10, Constitution of the United States.

"7. Because the statute of limitations, sec. 30, ch. 77, Rev. Stat. of Illinois, passed after the execution of said McCune mortgage, materially impairs the obligation of said contract and cannot be applied to the defendant without conflicting with art. 13, sec. 17, constitution of 1848, and art. 2, sec. 14, constitution of 1870, of the State of Illinois.

"8. Because it appears from the evidence that defendant's rights under said mortgage became vested prior to the passage of sec. 30, ch. 77, Rev. Stat. of Ill., and that prior to said statute and after condition broken the fee simple title to said premises was, as between mortgagor and mortgagee and their grantees, in the latter, and such title cannot be divested by said statute without violating the 14th amendment to the Constitution, of the United States and sec. 1979, U. S. R. S. enacted to enforce same.

"9. Because it appears from the evidence that the defendant has been in actual possession of the premises, by tenants residing thereon for more than seven years prior to the commencement of this
449 suit, and if the plaintiff has proved a connected title from the Government, then the trust deed of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, was such equitable title as is contemplated by sec. 4, ch. 83, Rev. Stat. of Ill.

"10. Because it appears from the evidence that the defendant has been in possession of the premises in controversy for more than seven years prior to the commencement of this suit, claiming to own the same, and has paid all taxes assessed thereon for said years under

claim and color of title, viz., title derived by the mortgage of McCune to Johnson, after condition broken and a foreclosure complete except as to taking out the deed on the certificate of purchase, which, under sec. 6, ch. 83, Rev. Stat., Ill., bars plaintiff's recovery.

"11. Because it appears from the evidence that the defendant went into possession of said premises in the summer or fall of 1872, after having filed her bill to foreclose the mortgage of McCune to Johnson, and has continued in possession ever since, and has paid all taxes on said premises and has foreclosed the said mort-
450 gage except as to taking out a master's deed on the certificate of purchase, and that while the time for taking out such deed has passed, and she is no longer entitled to the deed, she is still a mortgagee in possession, and the plaintiff, as holder of the mortgagor's title, cannot recover against her.

"12. The court erred in refusing to hold, as the law applicable in said case, each of the propositions submitted by the defendant, numbered from 'one' to 'twenty-four' inclusive.

"Wherefore, for the foregoing reasons, the defendant prays that a new trial, at common law, may be granted unto her."

32. The honorable supreme court of Illinois erred in not sustaining the tenth assignment of error laid and alleged therein, to wit: that the court below erred in refusing to allow the defendant's motion in arrest of judgment.

33. The honorable supreme court of Illinois erred in not sustaining the eleventh assignment of error laid and alleged therein, to wit: that the court erred in overruling the motion in arrest of judgment made by the defendant.

34. The honorable supreme court of Illinois erred in not
451 sustaining the twelfth assignment of error laid and alleged therein, to wit: that the court below erred in striking the second plea of the defendant from the files.

Said second plea of the defendant was filed May 24, 1901, and set forth that the plaintiff did not bring his said action within twenty years after the right to bring such action first accrued, or within twenty years after this defendant became seized or possessed of the said premises. Said plea is set out in the transcript of record at pages 54 & 55 (State Court Abstract page 11). The order striking the plea from the files is set out in the transcript of record at page 70 (State Court Abstract page 12).

35. The honorable supreme court of Illinois erred in not sustaining the thirteenth assignment of error laid and alleged therein, to wit: that the court below erred in admitting improper evidence on the part of the plaintiff.

36. The honorable supreme court of Illinois erred in not sustaining the fourteenth assignment of error laid and alleged therein, to wit: that the court below erred in refusing to admit proper testimony offered on behalf of the defendant.

37. The honorable supreme court of Illinois erred in not sustain-

ing the fifteenth assignment of error laid and alleged therein,
452 to wit: that the judgment of the court below was repugnant to the Constitution of the United States and the constitution of the State of Illinois.

38. The honorable supreme court of Illinois erred in not sustaining the sixteenth assignment of error laid and alleged therein, to wit, that the construction of section 30 of chapter 77 of the Revised Statutes of the State of Illinois, as applied by the trial court to the facts in the present case, violates section 10, article 1 of the Constitution of the United States, section 1 of the 14th amendment to the Constitution of the United States, section 1979 of the Revised Statutes of the United States, and section 14, article 2, of the constitution of Illinois.

39. And for that there are other manifest errors appearing in said record and proceedings.

Wherefore the said Lydia Bradley petitioner, plaintiff in error, prays the honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of Illinois entered in the above entitled cause.

LYDIA BRADLEY,
Plaintiff in Error,
By JOHN S. MILLER,
MERRITT STARR, AND
W. W. HAMMOND,
Her Attorneys.

JOHN S. MILLER,
MERRITT STARR, AND
W. W. HAMMOND,
Attorneys for Plaintiff in Error.

Endorsed on cover: File No. 18,874. Illinois supreme court. Term No. 243 Lydia Bradley, plaintiff in error, *vs.* H. W. Lightcap. Filed March 23, 1903. File No. 18,874.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1903.

No. 243.

LYDIA BRADLEY,
Plaintiff in Error,
vs.
H. W. LIGHTCAP,
Defendant in Error.

} Error to Supreme Court of Illinois.

THE PLEADINGS.

This is a consolidation of five ejectment suits brought by defendant in error against plaintiff in error's tenants July 13, 1895, in the Circuit Court of Mason County, taken by change of venue to Fulton County for trial. The judgment in the Circuit Court of Fulton County was in favor of plaintiff in error. (Print. Trans., 47-48.)

At the October Term, 1898, however, the Supreme Court reversed this judgment.

Upon petition for rehearing the case was reargued and at the October Term, 1898, the Supreme Court adhered to its opinion.

Subsequently a second rehearing was permitted by that court, and after the third hearing the court still adhered to its first opinion and the judgment was reversed, and the cause remanded to the Circuit Court. (Print. Trans., 49; 186 Ill. R., 510.)

Thereupon said ejectment case came on for trial at the September Term, 1902, of the Circuit Court of Fulton County in accordance with the views expressed by the Supreme Court of Illinois, and judgment was recovered against plaintiff in error. (Trans., p. 61; Rec., p. 70.)

Plaintiff in error then appealed to the Supreme Court of Illinois, where the judgment of the lower court was affirmed February 18, 1903, by a majority of the justices. (Print. Trans., 259, 266, 269; 201 Ill. R., 511, 524, 528, 534.)

From this decision of the Supreme Court of Illinois writ of error to this court was sued out, and the record is brought here as No. 243.

THE FACTS.

These consolidated cases arise out of the same state of facts, about which there is no controversy. They involve the question of the right of defendant in error, Lightcap, to recover in ejectment 680 acres of land hereinafter mentioned, which is in the possession of plaintiff in error, and (involved therein) the question of the constitutionality of a statute of Illinois of 1872, passed after the execution of the mortgage deed under which plaintiff in error claims, as said statute is construed and applied by the Supreme Court of Illinois herein, to deprive plaintiff in error of her estate and possession.

June 3, 1867, Tobias S. Bradley loaned T. B. Breedlove $19,616, and to secure the same took a mortgage upon 1,200 acres of land in Mason County, Illinois. (Trans., p. 180.)

Upon the death of Tobias S. Bradley, Lydia Bradley, his widow, became the sole owner of the Breedlove mortgage and notes.

October 8, 1867, T. B. Breedlove conveyed said 1,200 acres to Benjamin S. Prettyman of Pekin, Illinois, subject to said mortgage to Bradley. (Trans., p. 86.)

August 13, 1868, Benjamin S. Prettyman conveyed a part of said lands, 680 acres, the premises now in controversy, to Absalom McCune, retaining the remainder, 520 acres, in his own name. (Trans., p. 89.)

At the same time he procured from said McCune a mortgage trust deed running to E. G. Johnson, trustee, securing the payment of $15,000 upon said 680 acres of

land, evidenced by three notes drawn to the order of Lydia Bradley, and due in one, two and three years after date respectively. (Trans., p. 95.) This form of mortgage—a deed of trust in the nature of a mortgage to a third person as trustee—is a common form in Illinois.

The said trustee, E. G. Johnson, was then Mrs. Bradley's attorney in Peoria, Illinois.

Taking these notes and the trust deed to Washington Cockle, then agent for Mrs. Bradley, Mr. Prettyman persuaded her through said agent, to accept them as part payment of the Breedlove notes, paid the difference and secured a release of the 1,200 acres. (Trans., p. 126; Rec., p. 174; Trans., p. 218; Rec., p. 315.)

November 13, 1868, Mr. Prettyman secured a conveyance of the 680 acres from McCune, subject to said trust deed to Johnson. (Trans., p. 243, p. 91.)

Absalom McCune then disappeared from the state and has never since been found. (Trans., p. 198; Rec., p. 289.)

No taxes were ever paid by the mortgagor, McCune, or his grantee, Prettyman (Print. Trans., 203-211), and no part of the principal or interest of the mortgage debt was ever paid, but every covenant of the mortgage deed was broken by them.

About July 1, 1870, she appointed Austin Johnson her business agent. (Print. Trans., 197.)

In 1871 plaintiff in error discovered that McCune had gone, that no taxes had been paid since 1867, that the land was all swamp, unimproved and unoccupied and worth only $1 to $10 per acre, and that all the valuable land in the original Breedlove mortgage had been secured by said Prettyman free and clear of encumbrance.

(Trans., p. 147; Rec., p. 207.) Mrs. Bradley thereupon, on May 24, 1871, redeemed from the tax sales for taxes of 1868 and 1869; and again in 1872 for the taxes of 1871 (Print. Trans., 201, 203-211, 221), and she herself has paid all other taxes on the land assessed since the mortgage was made. (Print. Trans., 221.)

In 1871, in the first part of the summer, Austin Johnson in her behalf went upon the land which was lying vacant and open. (Print. Trans., 198, 212.)

In the summer of 1872 Mrs. Bradley and Austin Johnson together went upon the land and she took personal and exclusive possession of it, which by herself and her tenants she has retained ever since. (Print. Trans., Ev. of Johnson, 199, 200, 201; Ev. of Mrs. Bradley, *id.*, 218, 219, 222-3.)

At the March Term, 1872, of the Circuit Court of Mason County she filed a bill to set aside said transaction with Prettyman for fraud, and to subject the whole 1,200 acres to the payment of the balance of the debt. (Trans., p. 99.)

This bill was contested until August 22, 1879, when the court denied the prayer of the bill to set aside the release of the 520 acres of good land, and entered decree of foreclosure and sale upon the 680 acres of swamp land only. (Trans., p. 137.)

The amount found due plaintiff in error was $31,500.

The 680 acres were sold by the Master in Chancery October 27, 1879, and bid in for plaintiff in error for $10,000. (Trans., p. 141.)

The history of the case ends here. No evidence was offered to show whether or not a deed had been issued upon said certificate. Although the possession of plaintiff in error was *prima facie* evidence of title, and the rule

is that the possessor will be deemed the true owner until the contrary appears, in this case the state court has, as we conceive, erroneously reversed this presumption.

Plaintiff in error had, however, in 1871 found the land abandoned (Trans., p. 198) and sold for taxes; had redeemed the same (Trans., p. 203), and fenced and thence thereafter occupied and used the 680 acres of land for hay and pasture as much as the nature of the land would permit. After the foreclosure she proceeded to develop and improve the land. A drainage district was organized and large ditches dug, thoroughly draining the whole swamp. Three sets of farm buildings were erected, fences were built, tiles were laid, the land broken and reduced to cultivation (Trans., pp. 221 and 222), and she has continued in possession by her tenants until July 13, 1895, when said suits in ejectment were filed, and thence until this time. These suits were brought by defendant in error, to whom Mr. Prettyman had conveyed by quitclaim September 4, 1893, the deed being recorded November 30, 1894. (Trans., p. 94.)

Although these suits were brought in Mason County, where the land is situated, the cases were taken to Fulton County upon a change of venue. (Trans., p. 31.)

At the time of the execution of the mortgage deed in question, under which plaintiff in error claims, the statutes of Illinois provided:

> "§ 24. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors, administrators or grantors, grantees to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of execution issued upon judgments at common law, and judgment creditors may redeem lands sold under

any such decree in the same manner as is prescribed for the redemption of lands, in like manner, sold upon executions issued upon judgments at common law." (Rev. Stat., 1845, Chap. 57, Sec. 24, p. 305; Gross Statutes, p. 382.)

This act was passed in 1841, and is the same act which was before this court in *Bronson* v. *Kinzie,* 1 How., 311. The section of the statute allowing redemption from execution sales, which is thus extended to foreclosure sales under mortgages, is set forth under the second division of the "questions involved," a little later in this brief (*post,* p. 15).

The statute relating to sales upon execution, in force when the mortgage was made, further provided:

"§ 12. Whenever any land or tenements shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing the deed for the premises sold, to give to the purchaser or purchasers of such lands or tenements a certificate in writing describing the lands or tenements purchased, and the sum paid therefor, or, if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed as is provided in this chapter; and said sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate, signed by him; and said certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained." (Rev. Stat. Ill., 1845, Chap. 57, Sec. 12, p. 302; Gross Statutes, 1869, p. 380.)

"§ 22. If such lands or tenements so sold shall not be redeemed, as aforesaid, either by the defendant or by such creditor, as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer who sold the same, or his successor in office, or his executors or

administrators, to complete such sale, by executing a deed to the purchaser." (Rev. Stat., 1845, Chap. 57, Sec. 22, p. 304; Gross Statutes, 1869, p. 381.)

The statutes of Illinois (prior to the act of 1872, which is in question in this case and is referred to shortly hereafter), contained no limitation upon the time within which a sheriff's or master's deed must be taken, after the period for redemption had expired, and prescribed no penalty or loss of right to the purchaser by reason of delay or failure in taking out such deed.

In *Rucker* v. *Dooley*, 49 Ill., 377 (which was decided at the September Term, 1868, a few weeks after the mortgage deed here in question was dated), the Supreme Court of Illinois, in an equity case, decided, as against a purchaser of real estate at an execution sale upon a judgment, who was never in possession of the land, and who had no claim to the land, except under his judgment and execution sale, and who had taken out a sheriff's deed twenty-nine years after the sale, and in favor of a *bona fide* purchaser in possession claiming by mesne conveyances from the judgment debtor, as follows:

1. That for the protection of purchasers for a valuable consideration without notice of any lien, from the judgment debtor and those claiming under him, a sheriff's deed should not be executed to the holder of a certificate of purchase, who is not under legal disabilities, on the application of the holder to a sheriff, nor by any rule or order of court upon him for any such purpose, after the lapse of twenty years. That such lapse of time shall be considered an insuperable bar to its execution. This ruling appears to have been by analogy to the limitation upon an action for the recovery of lands.

2. That if the application for a deed be made after the lapse of eight years and three months (which was the period of seven years during which a judgment is a lien upon land, plus fifteen months, the longest period allowed for redemption by a judgment debtor or his creditors after a sale upon execution), and within twenty years, the same must be made through the proper court, by a rule upon the sheriff to show cause, and on notice to parties interested, when the record should show the existence of intermediate purchasers from the judgment debtor, or shall otherwise appear, of the particular lot or tract of land described in the certificate. This appears to have been by analogy to certain other limitations such as that fixed for the lien of a judgment. (49 Illinois Reports, 380-84.)

The above limitations, which were laid down by a court of equity as called for *ex acquo et bono,* had no application to a case like this at bar, where a mortgagee became the purchaser at a foreclosure sale, and was, from and after the expiration of the period of redemption, in actual possession and occupation of the premises, claiming title adversely to all the world. And, under the law of Illinois, in force when the mortgage in question was made, plaintiff in error—having entered into actual possession and occupation of the mortgaged premises after condition broken, but before the foreclosure decree and sale, and remained continuously in possession for many years (more than twenty), before the ejectment suits here were brought, and having paid all taxes,—had the estate and right of possession, and could not be deprived thereof or disturbed therein at the suit of the mortgagor or his grantee, even if she had never taken out a master's deed.

The decision of the Supreme Court of Illinois in the case at bar, holds, *in a suit at law in ejectment* by the grantee of the mortgagor, that under and by force of the statute of that state, enacted in 1872, nearly four years after this mortgage was made, and which provided that if the holder of a certificate of purchase under a sheriff's or master's sale should not take the deed within five years of the expiration of the time of redemption, "the certificate of purchase shall be null and void," the plaintiff in error, failing to show that she had taken out such master's deed within such period, ceased to have any interest whatever in the premises or any right to the possession; and that although she had entered into and held possession and paid taxes, as aforesaid, the mortgagor, or his grantee, was entitled to judgment against her in ejectment, and to oust her therefrom without payment of the mortgage debt or any part thereof.

THE QUESTIONS INVOLVED.

I.

The constitutionality of Section 30 of the act of the General Assembly of Illinois, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree," approved March 22, 1872; in force July 1, 1872,—being Chapter 77, Rev. Stat., Illinois, as the same is construed and applied by the Supreme Court of Illinois in this case, is questioned.

After providing with respect to the matters specifically mentioned in the title of the act and for the issue of a certificate of purchase by the officer making the sale to the purchaser (such provisions being not materially different from the previous statutes herein quoted), the statute provides in Section 30 as follows:

> "When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor *at any time within five years from the expiration of the time of redemption.* The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. *If the time of redemption shall have elapsed before the taking effect of this act, a deed may be given within two years from the time this act shall take effect. When such deed is not taken within the time limited by this act the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer*

whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed."

(The part italicized was first enacted in this act of 1872.)

The construction put upon this statute by the Supreme Court of Illinois in this *suit at law* is briefly this:

Admitting that the trust deed conveyed the title to Johnson as trustee for plaintiff in error, and that after condition broken, under the law existing at the date of the mortgage, the title to said lands was absolute in plaintiff in error as against the mortgagor and his grantees, nevertheless, when the sale was made under the decree and the mortgagee purchased at the sale (and so received no money upon her mortgage debt), the mortgage lien was satisfied as to the land, and all rights of the purchaser were represented by the certificate of purchase, which was a statutory lien upon the land for the payment of the amount bid at the sale and necessary to redeem, or (in default of that redemption) a right to a deed. But the decision in effect further was that by force of said statute of 1872, the mortgagee's legal title was cut down so that if the purchaser failed to take the deed within the time limited by the said statute, her certificate of purchase, by force of the statute, became null and void, and the legal title of the mortgagee terminated as it would upon redemption, and the mortgagee, or she, as purchaser, had no interest whatever in the premises; and that the legal title was then in the mortgagor, or his grantees, and without any payment by him of the mortgage debt, was now freed from the mortgage, and

he was the owner in fee of the land discharged of the mortgage debt, and entitled to recover the possession from her at law in ejectment on the strength of his perfect title.

See opinion in *Lightcap* v. *Bradley*, 186 Ill., 510 (518), as well as opinion in the record in this case (pp. 262, 263).

In effect the decision is that the legal title, which was in Johnson the grantee, in the mortgage deed and became absolute in him, as trustee for plaintiff in error, on condition broken in 1869, was made to divest and became revested in the mortgagor by force of said statute upon a new condition or event prescribed by said statute; and that by such statute the mortgagor's previous right, which was to redeem upon payment, is enlarged into the legal title discharged of all claim under the mortgage or purchase upon such new event and without any redemption or payment.

Said statute as thus construed and applied violates two provisions of the Constitution of the United States, viz.:

> Art. 1, Sec. 10: "No state shall * * * pass any * * * law impairing the obligation of contracts."
>
> Sec. 1, Amendment 14: * * * "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law."

Said statute, as construed and applied in this case, impairs the obligation of the mortgage contract of McCune to Johnson, trustee for plaintiff in error, in this: That said mortgage was executed and delivered August 3, 1868; the condition was broken the following year by failure to pay taxes, and by failure to pay the mortgage note then due, and again in 1870 and 1871 by fail-

ure to pay the notes then maturing, whereby the title had become at law absolute in plaintiff in error as against the mortgagor and his grantees, prior to the enactment of said statute of March 22, 1872. Such absolute title at law could only be defeated by actual payment, made in order to redeem the premises under the equitable right to redeem. The suit in equity and decree therein for foreclosure and sale did not destroy or affect that legal title until such title should pass by master's deed to the purchaser at that sale. But by this act of 1872, as thus construed and applied, this contract right has been impaired; and by its application to eject her from the possession of her property, she is deprived of her property without due process of law.

Again, by the foreclosure decree and sale, October 27, 1879, the equity of redemption remaining in the mortgagor was limited to twelve months, and upon his failure to make redemption his right to redeem was foreclosed and barred. This was one of the obligations of the mortgage contract at its date, and was the express provision of the decree. (Pr. Trans., pp. 139-140.)

This obligation of the mortgage contract has been impaired by said statute of 1872, as so construed and applied, so that the mortgagor's title was not fully divested by such foreclosure, but remained in him subject only to the right of the plaintiff in error to take a deed from the master in chancery, and upon her failure to take such deed within the time prescribed, her title failed, and that of the mortgagor remained. And her right and title having been executed and made effectual by possession, is, by such statute, as so applied to oust her therefrom by the writ of ejectment without any compensation, deprived of her property without due process of law.

II.

Said statute of 1872, as construed and applied, impairs the obligations of said mortgage contract in this, to wit: Sec. 13, Ch. 57, R. S. Ill., 1845, in force at the date of the mortgage contract, provided:

> "It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution, within twelve months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of 10 per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted shall be null and void."

And by Section 24 of said statutes which is hereinbefore set forth, it was made lawful for the mortgagor or his grantees to redeem in the manner prescribed for the redemption of lands sold by virtue of executions upon judgments.

And by the decisions of the courts of last resort of said state, it had become the established construction of said statute, and a rule of property, at the date of said mortgage contract, that if the mortgagor failed to redeem in accordance with said statute, thereafter he had no further right, title or interest in the premises sold; and said statutory enactments and judicial decisions became a part of the obligation of said mortgage contract; yet the said statute of 1872, as construed and applied by the Supreme Court of Illinois in this case, impairs said obligation of

the mortgage contract, in that not only is the certificate of purchase declared void, but all rights of the holder thereof and of the mortgagee are destroyed and declared ended, without any payment to her of the mortgage debt, while the mortgagor and his grantee, without making any payment of the mortgage debt, are held and considered to have regained the legal title to the mortgaged premises after foreclosure and sale and expiration of the period of redemption, free and discharged of the mortgage debt, which is contrary to said Section 10 of Article 1 of the Federal Constitution.

III.

Said decision of the Supreme Court of Illinois in this case deprives plaintiff in error of her title to the premises in controversy without due process of law, in this, to wit:

That upon condition broken, the title conveyed by the mortgage became at law absolute in her, or in E. G. Johnson, the grantee, as trustee for her; and after rightfully reducing such mortgaged property to possession, she could not be deprived thereof except upon payment.

By the law of Illinois, at the time when this mortgage was made, and thence until the decision of the Supreme Court of Illinois herein, that legal title in the mortgagee was not determined or affected by the foreclosure sale in equity, but remained in the mortgagee until it should either be determined and revert to the mortgagor by his redemption according to law, or be conveyed by the master's deed to the purchaser. It was, from and after such sale, in the mortgagee in trust—for the mortgagor if he should redeem, or, in default of redemption, for the purchaser.

By the foreclosure of the mortgagor's title and purchase by plaintiff in error, and by the failure of the mortgagor to redeem, his right to redeem was barred, and plaintiff in error became entitled to take a deed from the master in chancery, and thereby her equitable title was complete and added to the legal title already in her, or held in trust for her by the grantee in the trust deed; and being in possession she had an indefeasible title as against the mortgagor and all the persons claiming under him, according to the fixed rules of law in said State of Illinois at the date of said mortgage and of the breach of condition and acquiring possession thereunder, and at the date of her purchase and the expiration of the time for redemption. But the Supreme Court of Illinois in and by its said decision has departed from the former holdings of said court and the law of the land, and has established a new rule, as the construction and effect of said statute of 1872, by which it is held that no title was absolutely vested in plaintiff in error by said mortgage, breach of condition thereof, possession and proceedings, and the mortgagor's title was not completely divested by such foreclosure and failure to redeem;—and that thereby plaintiff in error is deprived of her property without due process of law, contrary to Section 1 of the 14th Amendment of the Constitution of the United States.

IV.

The title and possession (by her tenants) of plaintiff in error of the premises in question, at and before the commencement of this suit, were complete and a defense to this action within Section 4 of Chapter 83 of the Revised Statutes of Illinois, which was enacted (in 1835) prior to the execution of said mortgage, and which is as follows:

> "Action brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual residence thereon for seven successive years, having a connected title in law or equity, deducible of record from this state or the United States, or from any public officer or other person authorized by the laws of this state to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid; but when the possessor shall acquire such title after taking such possession the limitation shall begin to run from the time of acquiring title."

The title relied upon (if she did not have the legal title) is the equitable title derived as set forth in the foregoing division III, and this is deducible of record from the United States, if defendant in error has proved his title, since Prettyman, his grantor, acquired title from her mortgagor, subject to the mortgage under which plaintiff in error secured her equitable title. Upon the expiration of the mortgagor's period of redemption, plaintiff in error was entitled to the master's deed, and to the legal title thereby conveyed, if she did not already then have the legal title. That was a perfect equitable title, or "title in equity" within the above statute.

It is admitted she has paid all taxes since 1871 and has been in actual possession by her tenants since 1872.

Yet by a construction and application of the said act of 1872, which was first given thereto by the decision of the Supreme Court of Illinois in this case after her right and defense under the above statute had become complete, she is deprived thereof and of her property without any compensation and without due process of law.

BRIEF.

I.

The law of the land, as recognized and enforced by the courts, providing means of enforcement of contracts, becomes a part of the contract the same as though included in its terms; and a change in such law, after a contract has been made or title vested thereunder by which change the obligation of such contract is impaired or such title is divested, is a law impairing the obligation of contracts, and if accomplished by a statute of a state is obnoxious to Section 10, Article 1 of the Constitution of the United States.

Tennessee v. *Sneed*, 96 U. S., 69.
Edwards v. *Kearzey*, 96 U. S., 595.
Louisiana v. *New Orleans*, 102 U. S., 203.
Walker v. *Whitehead*, 16 Wall., 314.
Field v. *Brokaw*, 148 Ill., 654.
Barnitz v. *Beverly*, 163 U. S., 118.
Seibert v. *Lewis*, 122 U. S., 284.
Bronson v. *Kinzie*, 1 How., 311 (319).
Gunn v. *Barry*, 15 Wall., 610.
Shapleigh v. *San Angelo*, 167 U.S., 646 (657).
Ogden v. *Saunders*, 12 Wheat., 213 (257).
McCracken v. *Hayward*, 2 How., 608 (717).

II.

The English law of mortgages was adopted in Illinois. A mortgage is a conditional conveyance of the fee. The legal title passes to the mortgagee. After condition broken, the title at law becomes absolute in the mortgagee, who may recover possession as against the mortgagor. The mortgagee is held, in law, the owner of the fee, having the *jus in rem* as well as the *jus ad rem*. (See cases cited below.) This ejectment suit was one at law, and it did not matter that the rule was different in a court of equity, as the court at law could not consider that rule.

Esker v. *Heffernan*, 159 Ill., 38-43.

After condition broken the mortgagor has only an equity of redemption. By the redemption statute in force when this mortgage was given, that equitable estate or right was continued for twelve months after a foreclosure.

Bronson v. *Kinzie*, 1 How., 311, 322.

Such was the law of the state as promulgated by the courts of last resort at and before the date of the mortgage contract in question in this case.

Bronson v. *Kinzie*, 1 How., 311 (318).
Carroll v. *Ballance*, 26 Ill., 9 (16, 17).
Chickering v. *Failes*, 26 Ill., 507 (519).
Nelson v. *Pinegar*, 30 Ill., 473 (481).
Griffin v. *M. Co.*, 52 Ill., 130 (145).
Kenyon v. *Shreck*, 52 Ill., 382 (386).
Kelgour v. *Wood*, 64 Ill., 345 (347, 348).
Williams v. *Brunton*, 3 Gilm., 600 (621, 622).
Longwith v. *Butler*, 3 Gilm., 32 (36).
Kruse v. *Scripps*, 11 Ill., 98 (104).

The right of the mortgagor, or his grantees, to redeem after condition broken is a purely equitable right—the creation of courts of chancery; and can only be asserted in a court of equity. It could not be recognized in a court of law in an ejectment suit, as is done in the case at bar.

Kenyon v. *Shreck*, 52 Ill., 382 (386).
Bracken v. *Cooper*, 80 Ill., 221 (231).
Mulvey v. *Gibbons*, 87 Ill., 367 (383).

His right of redemption after sale and under the statute was only upon the absolute condition of making full payment, within a prescribed time, of the bid, interest and costs.

And so the law of Illinois remained after said date, and still remains and is enforced in cases where said statute of 1872 does not apply to change it.

Kelgour v. *Wood*, 64 Ill., 345 (348).
Vallette v. *Bennett*, 69 Ill., 632 (635).
Harper v. *Ely*, 70 Ill., 581 (585).
Oldham v. *Pfleger*, 84 Ill., 102 (103-4).
Davis v. *Conn. Mut. L. I. Co.*, 84 Ill., 508 (510).
Mulvey v. *Gibbons*, 87 Ill., 367 (382).
Fitch v. *Wetherbee*, 110 Ill., 475 (487).
Smith v. *Mace*, 137 Ill., 68 (74).
Esker v. *Heffernan*, 159 Ill., 38 (40).
Walker v. *Warner*, 179 Ill., 16 (23).
Ware v. *Schintz*, 190 Ill., 189 (193).
Farrar v. *Payne*, 73 Ill., 83 (88).
Stone v. *Tyler*, 173 Ill., 147 (155).

The legal title here passed to Johnson, the grantee in the trust deed, and became absolute in him as trustee for plaintiff in error, on condition broken, which occurred as

early as 1869. That legal title in Johnson, trustee, was not divested and revested in the mortgagor, or affected, by the foreclosure decree in equity and sale thereunder, unless such effect of divesting a title is given to the statute of 1872 here in question.

III.

By the law of Illinois, as promulgated and enforced by the courts of last resort at and prior to the date of said mortgage contract, if the mortgagor and his grantees failed to redeem the mortgaged premises from foreclosure sale within the time limited by the statute, and the decree of foreclosure, his equity of redemption was barred and foreclosed, and thereafter he had no further right, title or claim in or to the premises.

Burgett v. *Osborne*, 172 Ill., 227 (238).
Bozarth v. *Largent*, 128 Ill., 95 (107).
Smith v. *Mace*, 137 Ill., 68 (73).
Stephens v. *Ill. Mut. Fire Ins. Co.*, 43 Ill., 327 (331).
Jones on Mortgages, Vol. 2, Sec. 1661.
Mulvey v. *Gibbons*, 87 Ill., 367 (382).
Massey v. *Westcott*, 40 Ill., 160 (163).
Herdman v. *Cooper*, 138 Ill., 583 (587).
Lucas v. *Nichols*, 66 Ill., 41 (43).
McLagan v. *Brown*, 11 Ill., 519 (522-3).
Fitch v. *Wetherbee*, 110 Ill., 475 (487).

Defendant in error could only recover in this ejectment suit on the strength of his own title.

Hague v. *Porter* (1867), 45 Ill., 318.
Vallette v. *Bennett* (1873), 69 Ill., 632.
Hammond v. *Shepard*, 186 Ill., 235.

And this must be a legal and not a mere equitable title.

Vallette v. *Bennett, supra.*

But on the other hand, defendant in error could not recover even if he had the legal title, while plaintiff in error rightfully held the possession of the land under a complete equitable title.

Stow v. *Russell,* 36 Ill., 18, at 36.
Staley v. *Murphy,* 47 Ill., 241-5.
Kilgour v. *Gockley,* 83 Ill., 109.
Sands v. *Wacaser,* 149 Ill., 530-4.

IV.

By said law of Illinois as it existed at the date of the mortgage contract, the equity of redemption of said McCune and his grantee Prettyman was barred and determined on the 27th day of October, 1880, at the expiration of twelve months from the date of sale to plaintiff in error (Rev. Stat. Ill., 1845, Sec. 13, Ch. 57, quoted under Point II above), and by the express provisions of the decree of foreclosure the defendants, McCune and Prettyman, and all persons claiming under them since the commencement of the foreclosure suit, February 22, 1872, were forever barred and foreclosed from all equity of redemption and claim of, in and to the said mortgaged premises or any part thereof when the same were not so redeemed by them within the twelve months after October 27, 1879. (Print. Trans., 139.)

But, as construed by the Supreme Court of Illinois in the case at bar, said statute of 1872 has so changed the law that notwithstanding the mortgagor and those claiming under him did not redeem said premises from said

sale according to law, when the certificate of purchase became void, the title to said premises must, in order to give practical effect to said statute, be still in the mortgagor or in the defendant in error claiming under him.

Opinion of the Supreme Court of Illinois (Trans., p. 266; Rec., p. 394).

Lightcap v. *Bradley*, 186 Ill., 510 (532).

For the purpose of determining whether it infringes the constitution, as claimed, said statute must be understood to mean what the courts of last resort of the state have construed it to mean.

Bell v. *Morrison*, 1 Pet., 351.

D'Wolf v. *Rabaud*, 1 Pet., 476.

Van Rensselaer v. *Kearney*, 11 How., 297.

Tioga R. Co. v. *Blossburg & C. R. Co.*, 20 Wall., 137.

Townsend v. *Todd*, 91 U. S., 452.

Scipio v. *Wright*, 101 U. S., 665.

Smith v. *Ames*, 169 U. S., 466.

V.

By the law of Illinois at the time this mortgage was made the fee of the land was conveyed by the mortgagor to the trustee, Johnson, for the use of Mrs. Bradley. The condition of the mortgage was immediately broken, as soon as made, by failure to pay taxes previously and then due, no taxes having ever been paid by the mortgagor, and again by failure to pay the notes maturing in 1869, 1870 and 1871. (Print. Trans., pp. 118, 138, 203.)

After condition broken the title became absolute in the mortgagee, and so it was at the time of the enactment of the statute of 1872.

By the terms of the mortgage, as well as the law of the state, Mrs. Bradley was entitled to take possession of the mortgaged premises and, having taken possession under right and title vested prior to the statute of 1872, and having continued ever since in possession of the property, she cannot now be ousted by the grantee of the mortgagor without any payment of the mortgage debt, as the judgment in ejectment here in effect adjudges, unless said statute of 1872 has divested rights and title acquired prior to its passage.

A statutory bar does not *satisfy* a debt, annul a contract, or deprive the holder of security.

Keener v. *Crull*, 19 Ill., 189 (191).
Newland v. *Marsh*, 19 Ill., 376 (384).
McCagg v. *Heacock*, 42 Ill., 153.
Brockman v. *Sieverling*, 6 Ill., A. 512.
Hancock v. *Franklin Ins. Co.*, 114 Mass., 155.
Moses v. *St. Paul*, 67 Ala., 168.
Wheelan v. *Kinsley*, 26 Ohio St., 131.
Waterman v. *Brown*, 31 Pa. St., 161.
Kemp v. *Westbrook*, 1 Ves., 278.

VI.

If plaintiff in error had a right of entry as against the mortgagor in 1872, when condition was broken and she made her peaceable entry, the statute of 1872, which the Supreme Court of Illinois says is merely a statute of limitation (Trans., p. 265), cannot have destroyed or changed that right of possession without invading the constitution, for laches will not be imputed to one in the peaceable possession of land.

Mills v. *Lockwood*, 42 Ill., 111 (118).
Dorman v. *Dorman*, 187 Ill., 154 (160).

Wilson v. *Byers*, 77 Ill., 76 (84).
Boyd v. *Boyd*, 163 Ill., 611 (615).
Beck Lumber Co. v. *Rupp*, 188 Ill., 562 (570).
Parker v. *Shannon*, 137 Ill., 376 (392).
Bush v. *Stanley*, 122 Ill., 406 (418).

A constitutional statute of limitations does not run against or affect a possessor of real estate, but one out of possession. This was the law of Illinois when this mortgage deed was made.

Mills v. *Lockwood* (1866), 42 Ill., 111 (119).
Parker v. *Shannon* (1891), 137 Ill., 376 (392-3).

By said law of Illinois as it existed at the date of the mortgage contract, the equity of redemption of said McCune and his grantee Prettyman was barred and determined on the 27th day of October, 1880, at the expiration of twelve months from the date of the sale to plaintiff in error. (Rev. Stat. Ill., 1845, Sec. 13, Ch. 57, quoted under Point II above.) And by the express provisions of the decree of foreclosure the defendants, McCune and Prettyman, and all persons claiming under them since the commencement of the foreclosure suit, February 22, 1872, were forever barred and foreclosed from all equity of redemption and claim of, in and to the said mortgaged premises or any part thereof when the same were not so redeemed by them within twelve months after October 27, 1879. (Print. Trans., pp. 138-9.) And by the repeated decisions of the court of last resort of said State of Illinois it had become a fixed rule of property at and prior to the date of said mortgage that the mortgage conveyed the fee, subject to conditional defeasance; that after condition broken the title became ab-

solute in the mortgagee, who was entitled to recover possession of the premises; and that such legal title remained in the mortgagee unaffected by the equitable proceedings and decree of foreclosure and sale until by the master's deed it should pass to the purchaser at such sale. Such subsequent proceedings were in aid, and not in extinguishment, of the original title of the mortgagee.

Williams v. *Brunton,* 3 Gilman, 600 (622-23).
Kruse v. *Scripps,* 11 Ill., 98 (104).
Farrar v. *Payne,* 73 Ill., 82 (88).

The final judgment of the Supreme Court of Illinois in this case at law in ejectment establishes a different rule of law in order to give the statute of 1872 a "practical effect" and prevent its abrogation (186 Ill., 526), to wit: That the legal title of the mortgagee here was not absolute; and that the right of the mortgagor here and his grantee was not a mere equity cognizable or capable of being asserted only in a court of equity, but that the mortgagor, after condition broken, was still as against the mortgagee to be regarded as holding the title; and that his title was not completely divested by the foreclosure and sale and expiration of the period of redemption, but survived, and that the legal title of the mortgaged premises in the mortgagee did not survive the sale, but then ceased, and her only right then was the lien given by the certificate of purchase, and that the mortgagor or his grantee had the legal title, subject to such lien, from and after the sale, instead of a mere equity of redemption; and that all the right, title and interest of plaintiff in error ceased on January 27, 1886, unless she sooner secured a deed from the master in chancery; and that in that event the mortgagee purchaser is not longer entitled to hold possession as against the mortgagor and

his assigns. Such a change in the law, as here applied, deprives plaintiff in error of the right, title and interest vested in her under the laws of the state as they existed at the date of her mortgage and when condition was broken and when she took possession, and violates the prohibition of the 14th Amendment of the Federal Constitution.

Chicago, Burlington & Quincy Railroad Co. v. *City of Chicago,* 166 U. S., 226.
Scott v. *McNeal,* 154 U. S., 34 (45).
Taylor v. *Beckham,* 178 U. S., 548 (599, 605).
Tindal v. *Wesley,* 167 U. S., 204 (222).

VIII.

If the constitutional guaranties referred to protect plaintiff in error from the divestiture of her title, either by the statute of 1872 or by the decision of the Supreme Court of Illinois, she has such an equitable title as is contemplated by the statute of 1835, quoted in our statement of questions involved, and having been in possession, by actual residence thereon by her tenants, since 1872 and paid all the taxes, and for more than seven successive years from and after the expiration of the period of redemption (when her equitable title became complete),—she is protected by said statute from defendant in error's action.

Irving v. *Brownell,* 11 Ill., 402.
Collins v. *Smith,* 18 Ill., 160.
Martin v. *Judd,* 81 Ill., 488.
Dolton v. *Cain,* 14 Wall., 472.
Gregg v. *Tesson,* 66 U. S., 150.
Dredge v. *Forsyth,* 67 U. S., 563.

ERRORS RELIED UPON.

1. That said Supreme Court of Illinois erred in rendering decision in favor of the validity of the Statute of Illinois known as Section 30 of an Act of the General Assembly of Illinois, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree." Approved March 22, 1872, in force July 1, 1872; also known as Section 30 of Chapter 77 of the Revised Statutes of Illinois, according to the revision of 1874.

And in not holding that said statute was repugnant to the Constitution of the United States and to Section 10 of Article 1 thereof.

And in not holding that said statute was void.

5. That said Supreme Court of Illinois erred in rendering decision and judgment in favor of the validity of the authority exercised under the State of Illinois in said cause, and by virtue of which authority said H. W. Lightcap recovered said judgment against this petitioner and plaintiff in error.

And in not holding that said authority was repugnant to the Constitution of the United States and to Section 1 of Article 14 thereof, also known as Section 1 of the 14th Amendment to the Constitution of the United States.

And in not holding that said authority was void.

7. That said Supreme Court of Illinois erred in not sustaining the claim of this petitioner and plaintiff in error whereby she claimed her title, right, privilege and immunity in and to the properties described in the pleadings and evidence set forth in the record in this cause,

under the constitution and laws of the United States, and under Section 10 of Article 1 and Section 1 of Article 14 of said Constitution, and under Section 1979 of the Revised Statutes of the United States; and her claim that her said title and right are secure under said constitution and laws of the United States and said provisions thereof, from any act or deprivation by authority of said state under said statute thereof, and in not sustaining her claim that under said constitution and laws of the United States and said provisions thereof she has immunity in her said property from said acts and authority exercised under said state.

8. The honorable Supreme Court of Illinois erred in not deciding and holding that there exists in this cause a controversy necessarily involving the construction of the Constitution of the United States and particularly Section 10 of Article 1 thereof, as applicable to the certain statute of Illinois hereinbefore cited, and in not deciding said controversy in favor of the contention of this petitioner and plaintiff in error, and in not holding said statute of Illinois void.

9. The honorable Supreme Court of Illinois erred in not holding and deciding that there exists in this cause a controversy necessarily involving and drawing in question the construction of said section of the Constitution of the United States as applicable to the said statute of the State of Illinois as the same was construed and applied by the trial court, and in not deciding the said controversy in favor of the contention of this petitioner and plaintiff in error, and in not holding said Statute of Illinois void.

14. The honorable Supreme Court of Illinois erred in not holding and deciding that there exists in this cause

a controversy necessarily involving and drawing in question the construction of the Constitution of the United States of America and said Section 10 of Article 1, and said Section 1 of Article 14 thereof as applicable to the change of judicial construction of the law of mortgage contracts made by the Supreme Court of Illinois and said Circuit Court of Illinois in and for Fulton County, Illinois, subsequent to the date of your petitioner's mortgage contract by which her remedy thereunder was materially impaired.

20. The honorable Supreme Court of Illinois erred in not sustaining the sixth assignment of error laid and alleged therein, to wit: That the court below erred in refusing to hold as the law the propositions submitted by defendant. And as to each of said propositions, that the court erred in not sustaining the same. Said propositions are as follows, to wit:

"I. The court holds that Section 30, Chapter 77, Revised Statutes of Illinois, as construed and applied by the Supreme Court of the State of Illinois, has the effect of depriving the defendant of her property without due process of law, and is therefore in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and Section 14, Article 2 of the Constitution of the State of Illinois.

"II. The court holds that ejectment by a mortgagor or his grantee, claiming the bare legal title, cannot be maintained against a mortgagee in possession, after default, where the latter is in possession of the premises involved, under a certificate of purchase issued to her at sale, even although the time within which the holder of said certificate of purchase could have procured a deed therefor has expired.

"III. That Section 30, Chapter 77, of the Revised Statutes of Illinois, as construed by the Supreme Court of the State of Illinois, is in violation of Section 10 of Article 1 of the Constitution of the United States, and of Section 14, Article 2 of the Constitution of the State of Illinois, because, as applied to contracts in existence prior to its passage, or rights acquired under such contracts prior to its passage, such construction gives it the effect of impairing the validity of a contract obligation.

"IV. That Section 30 of Chapter 77 of the Revised Statutes of the State of Illinois, cannot be constitutionally applied to the rights of the defendant, Lydia Bradley, as mortgagee in the present case, because it was enacted since the said mortgage was given, and is in conflict with Sections 9 and 10 of Article 1 of the Constitution of the United States, and Section 14 of Article 2 of the Constitution of the State of Illinois.

"V. Section 30 of Chapter 77 of the Revised Statutes of Illinois, in so far as it relates to contracts in existence or rights acquired, prior to the time of its passage, is obnoxious to Section 10, Article 1 Constitution of the United States, and Section 14, Article 2, Constitution of the State of Illinois.

"VI. That Section 30 of Chapter 77, of the Revised Statutes of the State of Illinois, as construed and applied by the Supreme Court of the State of Illinois, is in violation of Article 1, Section 10 of the Constitution of the United States.

"VII. That Section 30 of Chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the Supreme Court of the State of Illinois, to the facts in the present case, violates Section 1 of the 14th Amendment to the Constitution of the United States.

"VIII. That Section 30 of Chapter 77 of the Revised Statutes of the State of Illinois, as construed and applied by the Supreme Court of the State of Illinois, to the facts in the present case, violates Section 1 of the 14th Amendment to the Constitution of the United States, and also Section 1979 of the Revised Statutes of the United States.

"IX. That if McCune or Prettyman failed to redeem said premises under the statute regulating the right of redemption from the sale of mortgaged premises involved herein, within the time provided by law, then the right, title and interest of the said McCune, Prettyman and his grantee, and each of them, would be cut off, and they, or either of them, could not afterwards, as against the defendant, assert affirmatively, under this section, in this action, any purported title which existed in them prior to the expiration of the time allowed for such redemption, for the purpose of reinvesting themselves, or either of them, with the possession of or title to said premises, because of the failure of the purchaser at said sale, the original mortgagee, the said Lydia Bradley, to take out within five years, a deed for said premises based upon said certificate of purchase.

"X. That said Section 30 of Chapter 77, Revised Statutes of Illinois, should be so construed as to be a statute of repose. That by the elapse of five years from the date of the mortgage sale without the taking out of the deed by the purchaser at said sale, there is no presumption either because of such sale or because of such failure so to take out a deed, that the debt is paid. The original mortgagee who went into possession of said premises for the purpose of protecting herself as such, and who was also the purchaser at said sale, would not, by reason of

such failure so to take out deed within five years, be therefore deprived of the right to possess and occupy said premises until the payment of the mortgage debt.

"XI. A mortgagee in a mortgage or a trustee in a trust deed has the right, upon condition broken, to enter into and take possession of the mortgaged premises and to retain and occupy the same until the payment of the debt.

"XII. The court holds that Section 30, Chapter 77 of the Revised Statutes of the State of Illinois should not be given such construction as to render the certificate of purchase of the defendant, Lydia Bradley, null and void or to create a presumption that the mortgage debt is paid or to divest her title as mortgagee in possession of said premises.

"XIII. That Section 30 of Chapter 77 of the Revised Statutes of the State of Illinois, should not be given such a construction as will have the effect of merging the mortgage debt, first, into the decree; second, into the certificate of purchase, which then represented the debt; and thirdly, of divesting the mortgagee's title as mortgagee in possession or otherwise, when the certificate of purchase becomes null and void, as held by the Supreme Court under the statute.

"XIV. Section 30, Chapter 77 of the Revised Statutes of the State of Illinois should be given such construction in this case that it merely affects the remedy of the said Lydia A. Bradley, defendant herein, and not such rights as she may have under and by the certificate of purchase under said mortgage foreclosure proceedings.

"XV. That the failure of McCune and Prettyman to redeem the premises involved herein from the sale under the decree of foreclosure, within the time provided by

law, completely and perpetually divested the said McCune and Prettyman, and each of them, and all their right, title and interest in and to said premises, and that they could not thereafter, in this action, as against the defendant, Lydia Bradley, as mortgagee in possession of said premises, establish any legal title to said premises, either at common law or under Section 30 of Chapter 77, Revised Statutes of the State of Illinois, for the purpose of reinvesting themselves, or either of them, with the possession of said premises, based upon the equity of redemption which existed in them, or either of them, prior to the expiration of the period limited by law within which they could redeem, solely because of the failure of the defendant as purchaser at said sale, to take out within five years a deed based upon the certificate of purchase issued to her.

"XVI. The court holds that a mortgagee in possession, after sale of the premises under a decree in foreclosure, and the purchase of the same by the said mortgagee, and the issuing to her of a certificate of purchase entitling her to a deed at any time after the expiration of fifteen months from said sale, and within five years from the date thereof, cannot, after the expiration of said five years, at a time when all right to redeem said premises has expired, be dispossessed of said premises in an action of ejectment by the original mortgagor, or his grantee, as holder of the legal title, because the said mortgagee, as the purchaser at said sale, has failed to take out a deed based upon her certificate of purchase within the time limited by the statute; for the reason that, being in possession as against the mortgagor and his grantees, she is entitled to retain such possession until her said mortgage is satisfied.

"XVII. The court holds the law to be that the laws which exist at the time and place of the making of a contract, enter into it and form a part of it. This embraces alike those laws which affect its validity, construction, discharge and enforcement.

"That at the date of the mortgage of McCune to Johnson, August 13, 1862, the laws of this state in regard to the enforcement of mortgage contracts, vested the legal title in the mortgagee upon failure of the mortgagor to comply with the conditions contained in the mortgage, and at law the mortgagee has a right to sue for and recover the possession of the land itself.

"That the act of defendant in taking peaceable possession of the vacant and unoccupied mortgaged premises was not a trespass, but was within her rights under the mortgage as fixed by the laws of this state then in force and effect, and was not more than the courts would have awarded her if she had sought their aid.

"That the possession of defendant was that of mortgagee from that time until she purchased the premises at the master's sale. That no new title was conferred upon her by such purchase, since the certificate of purchase does not purport to convey title, nor did it take away any part of the legal or equitable title theretofore vested in her.

"That after the decree and sale in *Bradley* v. *McCune*, the mortgagor and his assigns, under the laws as then held and announced by the courts of this state, no longer held the legal title, but an equity of redemption as fixed by the decree of foreclosure.

"That upon the expiration of the period of redemption, January 27, 1881, the equity of redemption of mortgagor and his grantees ceased altogether, and thereafter they had no right, title or interest in said premises.

"That defendant thereupon became entitled to a deed from the master in chancery, and being in possession with a right to the title, had a perfect equitable title.

"That the statute of this state relating to taking out deeds upon certificates of purchase, Sec. 30, Ch. 77, Rev. Stat., Ill., was passed after the date of said McCune mortgage and cannot be given an effect which would impair the obligation of the mortgage contract. Only such effect can be given to the statute as comports with the Constitution of the State and the United States. If this statute be given an effect which would terminate defendant's right, title and interest in the premises and deprive her of the right to maintain her possession if she failed to take a deed from the master within five years, such effect would amount to an impairment of contract and be obnoxious to the Constitutions of this State and the United States. The court holds the effect of said statute is merely to cut off the defendant's right to a conveyance from the master, leaving her in possession and with the same legal and equitable title she held before the lapse of the five years.

"The court holds further that if defendant maintained her possession by actual residence of her tenants upon said premises for seven years prior to the commencement of this action, and it appears that her equitable title is deducible of record from the United States, then plaintiff is barred by Sec. 4, Ch. 83, Rev. Stat., Ill., from maintaining this action.

"XVIII. The court holds the law to be that the laws which exist at the time and place of the making of a contract enter into it and form a part of it. This embraces alike those laws which affect its validity, construction, discharge and enforcement.

"That at the date of the mortgage of McCune to Johnson, August 13, 1862, the laws of this state in regard to the enforcement of mortgage contracts vested the legal title in the mortgagee upon the failure of the mortgagor to comply with the conditions contained in the mortgage, and at law the mortgagee had a right to sue for and recover possession of the land itself.

"That the act of the defendant in taking peaceable possession of the vacant and unoccupied mortgaged premises was not a trespass, but was within her rights under the mortgage as fixed by the laws of this state then in force and effect, and was no more than the courts would have awarded her had she sought their aid.

"That the possession of the defendant was that of mortgagee from that time until she purchased the premises at the master's sale. That no new title was conferred upon her by such purchase, since the certificate of purchase does not convey title nor did it take away any part of the legal or equitable title theretofore vested in her.

"That after the decree and sale in *Bradley* v. *McCune*, the mortgagor and his assigns, under the laws as then held and announced by the courts of this state, no longer held the legal title, but an equity of redemption as fixed by the decree of foreclosure.

"That upon the expiration of the period of redemption, January 27, 1881, equity of redemption of mortgagor and his grantees ceased altogether, and thereafter they had no right, title or interest in said premises and cannot recover in this action.

"XIX. The court holds that in this action only the legal title can be considered. That by the trust deed of McCune to E. G. Johnson the legal title was, as between

them, conveyed to Johnson as security for defendant's notes.

"That when default was made in the payment of said notes the legal title in Johnson and the equitable title in defendant, as between them and McCune, or his grantee, became absolute. That defendant was then entitled to possession as against McCune or his grantees.

"That she had a right to recover possession by ejectment or to take possession, peaceably, if possible, concurrently with her action to foreclose. That having taken possession of the mortgaged premises lying vacant and unclaimed, pending foreclosure, defendant entered under equitable title deducible of record from the United States, and if she continued in possession of said premises by residence of her tenants for more than seven years prior to the commencement of this action, she was entitled to the protection of Sec. 4, Ch. 83, of the Rev. Stat. of Ill., barring the right of plaintiff to recover in this action.

"That defendant's equitable title under the mortgage became vested upon breach of condition, and if it appears from the evidence that the breach occurred prior to July 1, 1872, then the defendant had a vested equitable title prior to the enactment of Sec. 30, Ch. 77, Rev. Stat. Ill., and that statute being a limitation statute, affecting remedies, only, could not operate to divest the equitable title in defendant, and cut off the running of the statutory bar under Sec. 4, Ch. 83, Rev. Stat. Ill.

"XX. The court holds that in this action only the legal title can be considered. That by the trust deed of McCune to E. G. Johnson the legal title was, as between them, conveyed to Johnson as security for defendant's notes.

"That when default was made in the payment of said notes, the legal title in Johnson and the equitable title in defendant, as between them and McCune or his grantees, became absolute. That defendant was then entitled to possession as against McCune or his grantees.

"That she had a right to recover possession by ejectment or take possession, peaceably if possible, concurrently with her action to foreclose.

"That having taken possession before decree she became mortgagee in possession, entitled to hold possession, as against said McCune or his grantees, until payment of said mortgage indebtedness or redemption of the premises from sale.

"That the purchase of the property at the master's sale for a part only of the mortgage debt was not as between defendant and said McCune or his grantees, a payment or satisfaction of the mortgage debt, nor did the sale and certificate of purchase divest or transfer any title.

"That a statute of limitations barring recovery upon said mortgage debt or barring the right to a deed under the foreclosure proceedings affects their remedy only, and does not divest rights already acquired under said contract or proceedings, as actual payment of the indebtedness would. In this sense, barring the debt is not equivalent to payment. The debt still exists after the bar is complete.

"The court holds, therefore, that defendant is still in possession as mortgagee after condition broken and as against McCune or his grantees is entitled to retain possession until said debt is paid.

"XXI. The court holds that as between the mortgagor and the mortgagee, after condition broken, the legal title is in the latter and he may maintain ejectment.

"That defendant, Lydia Bradley, as *cestui que trust* in the McCune mortgage, became vested with equitable title to the premises when default was made in the payment of the mortgage debt.

"That by decree of foreclosure in *Bradley* v. *McCune,* her equitable title was confirmed, and McCune and his grantees thereafter had only an equity of redemption.

"That by the master's sale and certificate no change was made in the title, since the certificate did not purport to convey or vest title, but only a right to a title after the expiration of the period of redemption.

"That after the expiration of the period of redemption and failure of McCune or his grantees to redeem, their equity of redemption was cut off and they had no further interest in the premises.

"That defendant, being then in possession and having a right under her certificate of purchase to a deed conveying the legal title to her, was equitable owner of the premises.

"That Sec. 30, Ch. 77, Rev. Stat. Ill., being a limitation statute, affecting the remedy only, cannot divest or terminate the equitable title so vested in defendant, but can only be effective to cut off her right to a conveyance of the legal title.

"That if the equitable title so vested in defendant is deducible of record from the United States, and it appears that she was in actual possession by residence of her tenants upon said premises more than seven years prior to the commencement of this suit, then plaintiff is barred by Sec. 4, Ch. 83, Rev. Stat. Ill., from maintaining his action.

"XXII. The court holds that Sec. 30, Ch. 77, Rev.

Stat. Ill., is a limitation statute materially impairing the legal remedies provided for the enforcement of the mortgage contract, and that it cannot be applied to such contracts executed prior to its enactment without conflicting with Sec. 10, Art. 1, Constitution of the United States, and Sec. 14, Art. 2, Constitution of Illinois.

"That defendant's certificate of purchase derived under foreclosure of the trust deed of McCune to Johnson, dated August 13, 1868, did not become null and void under said statute at the end of five years from the expiration of the period of redemption, but her rights continued to be be fixed by the laws of this state in force at the date said mortgage was given.

"That the law of this state at the date of said mortgage was that after condition broken the mortgagee had absolute title and right to possession, while the mortgagor had only an equity of redemption. That after foreclosure and failure to redeem the mortgagor's title was extinguished.

"The court therefore holds that plaintiff's right, title, interest and equity of redemption were extinguished on the 27th day of January, 1881, when he or his grantee failed to redeem from the sale to defendant, and he cannot recover.

"XXIII. That by virtue of the decree rendered in the mortgage foreclosure proceedings, introduced in evidence herein, and the sale thereunder, and a failure to redeem therefrom within the statutory period, all the right, title and interest of said McCune, Prettyman and his grantee in said premises was cut off, destroyed and terminated, and in this proceeding they or either of them cannot affirmatively assert such alleged title against the defendant, Lydia Bradley."

ARGUMENT.

I.

The statute of 1872, understood as construed by the Supreme Court of Illinois, cannot constitutionally be applied to plaintiff in error's case, because her mortgage was executed and delivered before said statute was enacted.

If said statute has the effect ascribed to it by the courts of said state, it impairs the remedies available to plaintiff in error at the date of the mortgage, and her contract rights and vested rights of property, in two respects:

First, the title of the mortgagor is not completely divested by breach of condition, foreclosure, sale and failure to redeem.

Second, the mortgagee's title is rendered defeasible if she fails to take a master's deed within a certain time.

That these are material impairments will be evident from comparison with many parallel cases in this court.

In *Bronson* v. *Kinzie*, 1 How., 311, where the statute complained of gave the mortgagor twelve months to redeem after foreclosure sale, the court said:

> "It, the new act, declares that although the mortgaged premises should be sold under decree, yet that the equitable estate of the mortgagor shall not be extinguished, but shall continue for twelve months after sale; and it moreover gives a new and like estate to the judgment creditors to continue for fifteen months. If such rights may be added to the original contract by subsequent legislation, it would be

> difficult to say at what point they must stop. * * * Any such modification of a contract by subsequent legislation against the consent of one of the parties unquestionably impairs its obligation and is prohibited by the constitution."

But in the case at bar the Supreme Court of Illinois has here held, in order to give said statute effect, that the title of the mortgagor is never completely divested unless the purchaser at the sale takes a deed from the master. This was distinctly stated in the first opinion of the court, published in Vol. 186 Ill., Rep. p. 526:

> "To hold that the mortgage remains in force (after foreclosure) would be to abrogate the statute, which would be of no practical effect, if the failure to take out a deed leaves the mortgage still in force. It is absurd to say that a mortgagee by neglecting or refusing to take a deed until the expiration of five years, can reinstate himself in the same position as before the purchase."

In the last opinion, contained in this record (p. 259), the Supreme Court of Illinois say (Print. Trans., p. 266):

> "When the certificate became void she ceased to have any interest whatever in the premises or any right to the possession. The judgment of the Circuit Court is affirmed."

It is evident that the court could not have affirmed a judgment in ejectment finding defendant in error the owner in fee simple of the mortgaged premises and awarding him the possession thereof without any payment of the mortgage debt, unless by holding that the mortgagor's title had not been completely divested by the foreclosure sale and failure to redeem. They must have held the title remained in the mortgagor and his grantees, subject only to the contingency that it should be divested *if the purchaser secured a deed from the master.*

Thus, the mortgagor's mere right of redemption existing at the time the mortgage contract was made, is enlarged by this later statute of 1872, so as to vest the mortgagor, or his grantee, with the legal title to the premises, freed and discharged of all title, right, interest, lien or claim of the mortgagee or of the purchaser at the foreclosure sale, without any redemption or payment of the mortgage debt at all. And the mortgagee and purchaser at the sale are divested of the legal title or the benefit thereof; and the purchaser in possession, with a complete equitable title, from and after the expiration of the period allowed for redemption, and right of possession, is divested of such equitable title and right of possession.

That was not the law of Illinois when this mortgage was given, nor prior to the enactment of the statute of 1872, as will appear later in this argument.

Carroll v. *Ballance*, 26 Ill., 9 (16, 17).
Chickering v. *Failes*, 26 Ill., 507 (519).
Nelson v. *Pinegar*, 30 Ill., 473 (481).
Kelgour v. *Wood*, 64 Ill., 345 (347, 348).
Oldham v. *Pfleger*, 84 Ill., 102 (103-4).
Rucker v. *Dooley*, 49 Ill., 377.
Bronson v. *Kinzie*, 1 How., 311 (318).

In *Bronson* v. *Kinzie*, this court was passing upon an Illinois statute, with reference to the laws of Illinois in regard to rights and remedies of mortgagees, which were the same at that date as at the date of plaintiff in error's mortgage. The impairment of remedy or right in the case at bar seems the more serious of the two, since it has resulted in the entire loss by plaintiff in error of the mortgaged property.

In *Barnitz* v. *Beverly*, 163 U. S., 118, the court held

that a state statute which authorized the redemption of property sold upon foreclosure of a mortgage where no right of redemption previously existed, or which extends the period of redemption beyond the time formerly allowed cannot constitutionally apply to a sale under a mortgage executed before its passage. The court said by Mr. Justice SHIRAS (quoting from the *Brine Case*, 96 U. S., 637):

> "This court held through Mr. Justice Miller that all the laws of a state existing at the time a mortgage or other contract is made, which affect the rights of the parties to the contract, enter into it and become a part of it, and are obligatory upon all courts which assume to give a remedy on such contracts, * * * that it is therefore said that these laws enter into and become a part of the contract"—and (quoting from other cases)—"the remedy subsisting in a state when and where a contract is made and is to be performed is a part of the obligation."
>
> "What we are now considering is whether the change of remedy was detrimental to such a degree as to amount to an impairment of the plaintiff's right; and as this record discloses that the sale left a portion of the plaintiff's judgment unpaid, it may be fairly argued that this provision of the act (which provided that the land 'shall not again be liable for sale for any balance') does deprive the plaintiff of a right inherent in her contract."
>
> "When we are asked to put this case within the rule of those issues in which we have held that it is competent for the states to change the form of a remedy, or to modify it otherwise as they may see fit, provided no substantial right secured by the contract is thereby impaired, we are bound to consider the entire scheme of the new statute and to have regard to the probable effect on the rights of the parties."

In the opinion of the Supreme Court of Illinois in this case (Trans., p. 264) the cases here cited, and others to the same effect, are reviewed and recognized as correct

expositions of the law upon this subject; but they are said not to be in point. It is contended said statute of 1872 is "one of limitation and affected only the remedy. And it was held to be a valid law, taking away no vested right and leaving a reasonable time for the pursuit of the remedy." (P. 265.)

But what is the "remedy" referred to? If it is merely the right to take the master's deed, and a reasonable time is given for that purpose, and no penalty is attached other than the denial of a deed, it might reasonably be claimed that this was not a material impairment of remedy. But the act of 1872, as here construed and applied by the Supreme Court of Illinois, does not stop there. If it had, then plaintiff in error, being rightfully in possession, could not have been deprived of such possession if she had taken out no master's deed, because her *right* would remain unimpaired by the loss of her remedy, and being in possession she need resort to no remedy. The bar of the mortgagor's equity of redemption would not have been destroyed or affected by her failure to get the master's deed.

As the state court holds, "all statutes of limitation are based on *laches*" (Print. Trans., 263); and *laches* will not be imputed to one in the peaceable possession of land. *Mills* v. *Lockwood*, 42 Ill., 111 (118); *Dorman* v. *Dorman*, 187 Ill., 154 (160); *Wilson* v. *Byers*, 77 Ill., 76 (84); *Boyd* v. *Boyd*, 163 Ill., 611 (615); *Beck Lumber Co.* v. *Rupp*, 188 Ill., 562 (570); *Parker* v. *Shannon*, 137 Ill., 376 (392); *Bush* v. *Stanley*, 122 Ill., 406 (418).

A statute of limitations does not run against or affect a possessor of real estate, but against one out of possession. *Mills* v. *Lockwood*, 42 Ill., 111 (119); *Parker* v. *Shannon*, 137 Ill., 376 (392-3). And an entry once

made by a mortgagee suspends the operation of a statute of limitations. *Fountain* v. *Bookstaver*, 141 Ill., 462; *Altemas* v. *Long*, 4 Barr, 254; *Hinman* v. *Crammer*, 9 Barr, 40; *Altemas* v. *Campbell*, 9 Watts, 28; *Miller* v. *Shaw*, 7 S. & R., 129.

But if the "remedy" referred to by the state court is the right of the mortgagee to declare a forfeiture for breach of condition, to enter and hold possession of the premises after condition broken; the right to maintain ejectment if necessary to gain possession; the right to be considered the owner of the fee as against the mortgagor; to foreclose the equity of redemption of the mortgagor and extinguish his title unless he redeems within the time prescribed by law; if these are the "remedies" referred to and to be taken away because the certificate of purchase is annulled by the statute, then it will hardly be denied that this is a material impairment of the contract.

If the "remedy" so referred to and taken away, is, as it is here, the right and estate and possession, of a purchaser at a foreclosure sale, after the period of redemption has expired and her right to a deed and her equitable title has become complete,—then it is the taking of her property without due process of law. This equitable title and right of possession gave a perfect defense to this ejectment suit. *Stow* v. *Russell*, 36 Ill., 18, 36; *Steley* v. *Murphy*, 47 Ill., 244-5; *Kilgour* v. *Gockley*, 83 Ill., 109; *Sands* v. *Wacasser*, 149 Ill., 533-4.

The language of the statute itself is offensive to the Federal Constitution. It purports to annul a certificate of purchase unless a deed is taken under it within a certain time. The legislature had no such power. A court would have that power only after giving to the beneficial owner an opportunity to be heard. But as construed and

given effect to by the state court here, this statute goes even further. It purports to take away and restore to the mortgagor, without any redemption or payment of the mortgage debt, the legal title, discharged of the mortgage.

In *Newland* v. *Marsh*, 19 Ill., 376, when the direct import of the language of the statute was that one who had paid the taxes upon real estate for seven successive years under claim and color of the title "should be deemed and adjudged the legal owner," the court said:

> "The judicial department of the government, being ordained for the administration of the laws, under the sanctions of and in obedience to the mandates of the federal and state constitutions, and the limits upon the legislative power in them contained, will consider acts of the legislature in connection with these constitutions and their limitations, and give the force of law to acts of the legislature in so far, and in so far only, as they are within the competency of the law-making power.
>
> It is the province of the judiciary to declare what is the law, in any case given for judicial determination, and to enforce only valid enactments of the legislature.
>
> The constitution of this state provides, that no freeman shall, 'in any manner, be deprived of life, liberty, or property but by the judgment of his peers or the law of the land.'
>
> The citizen cannot be deprived of his property by involuntary divestiture of his right to it, or by such transfer of it to another, except by judgment of law; and the legislature, having no judicial power, cannot impart to their enactments the force of a judicial determination.
>
> The legislative power extends only to the making of laws, and in its exercise, is limited and restrained by the paramount authority of the federal and state constitutions. It cannot directly reach the property or vested rights of the citizen, by providing for the

forfeiture or transfer to another, without trial and judgment in the courts; for to do so, would be the exercise of a power which belongs to another branch of the government, and is forbidden to the legislature. It is, however, said that these trials satisfy the requisitions of the constitution, and are all that is contemplated by the provisions alluded to. This is a fallacy too patent for special notice.

These ejectments are brought to try the title, or right of possession, to land in controversy, and the defendants cannot recover upon paramount title, *to be made and created in them by the judgments in these actions.* If they recover upon paramount title, it is because the court finds the title in them; not by virtue of anything in these actions, but because pre-existing facts established, have confererd upon them the title.

Although the legislature cannot divest titles, and destroy vested rights, the same provisions alluded to, have existed, as constitutional law, for ages in the mother country, are adopted and reasserted by us, and with them have gone, side by side, the various limitation laws of both countries. The ground, however, upon which they are held consistent with the paramount rule stated, is, that they apply to the remedy only, affording reasonable and adequate opportunity for enforcement of the right. In other words, if the law strikes at the right, and by its own force, or in connection with facts *aliunde*, in themselves immaterial, annihilates it, or confers the right upon another, the legislature exercises judicial power, which it cannot do. But such is not the nature of limitation laws. Under them the right remains after the bar of the action is complete but without remedy of enforcement. 'No law impairing the obligation of contracts, shall ever be made.' Const. Ill., Art. 13, Sec. 17.

The theory of limitation laws is, that they affect remedy—limiting the period within which rights may be asserted or remedies resorted to—affording a time and opportunity of enforcing rights by legal remedies, and leaving the right untouched, but regulating or limiting the use of the remedy for asser-

> tion of the right or recovery of the thing to which it relates. And upon no other ground can the second section of the Act of 1839 be upheld and enforced, as within the limits of the legislative power.
>
> The language: 'Shall be held and adjudged the legal owner of such land to the extent, and according to the purport, of his or her paper title,' is contained in the first as well as the second section of the act; and the first section having been uniformly treated by this court as a limitation of the remedy, it would seem to follow that the second section may be so construed and enforced. But, treating the second section according to the literal import of the words, the effect is, that the title of the owner is taken from him and conferred upon another, by force of the acts of paying the taxes for the seven years under color of title, and such construction, we hold, would render this section null and void."

The Supreme Court of Illinois might have given analogous construction to the statute of 1872, and held that it cut off merely the right to have a deed after the time limited, leaving plaintiff in error in possession of the rights and title she had acquired under her mortgage, and such construction would not have been subject to criticism. Such was the construction put upon this act by the minority of the state court. (Print. Trans., 266, 269.)

But instead of limiting said statute to constitutional bounds, said court seems to have given it the widest possible construction.

They have extended the penalty named in the statute to the mortgage itself, on the ground that "to hold that the mortgage remains in force would be to abrogate the statute, which would be of no practical effect if the failure to take out a deed leaves the mortgage still in force."

Lightcap v. *Bradley*, 186 Ill., 526.

This view of the effect of foreclosure upon the mortgage was not entertained before the enactment of the statute of 1872. In the case of *Williams* v. *Brunton*, 3 Gilm. (Ill.), R., 600, King, a mortgagee of Brunton, who had foreclosed his mortgage and become a purchaser at the sale, applied to be permitted to defend the action of ejectment brought by Williams. This application was resisted on the ground that King had no privity with Brunton, the mortgage having become extinguished by the foreclosure. In passing upon this point the court said (p. 622):

> "It is said, however, that the relation previously existing between King and Brunton ceased, a judgment of foreclosure having been obtained by King. It is true that a judgment or decree may, for some purposes, be considered as an extinction of the original cause of action; for instance, for the purpose of regulating the interest on money to which a party is entitled before final satisfaction of the debt, as was the case in 3 Scam., 263, to which authority the appellant has directed our attention. But it is equally true that for many other purposes, as for the ascertaining of priority of liens, for instance, the principle of extinction or merger finds no application. It is, in our opinion, a total misapprehension of the doctrine on mortgages, to contend that a mortgagee who, instead of foreclosing strictly, which would at once have given him the indefeasible legal estate, applies for a sale of the lands so as to have his debt satisfied and no more, the mortgagor being entitled to the surplus, if any, and who obtains a judgment or a decree, should thereby wholly lose the benefits of the title which he had by the mortgage. We consider a decree and a subsequent purchase and obtaining of a deed for the land from the master or sheriff as being connected with and as being in aid of his original title. A subsequent title so obtained is clearly consistent with the first title. It is hardly necessary to refer to authorities in support of this proposition."

The views here expressed were never departed from prior to 1872, and are referred to as authority in *Kruse* v. *Scripps*, 11 Ill., 98 (104), and *Farrar* v. *Payne*, 73 Ill., 88, decided in 1874.

The said statute of 1872 has, therefore, impaired the obligation of plaintiff in error's mortgage contract,

First, by creating in the mortgagor an estate after foreclosure and expiration of the time for redemption.

Second, by destroying, or at the least reducing, the title of the mortgagee after condition broken, foreclosure, sale and expiration of the period of redemption to an estate for five years, unless a master's deed is taken within that time.

II.

At the date of plaintiff in error's mortgage there was in force Section 13, Ch. 57, R. S. Ill., 1845, which we have set out *in hæc verba* in the statement of questions involved.

This statute and its construction constituted one of the obligations of the mortgage contract.

The uniform construction of the said statute prior to 1872, had been that if the mortgagor, or his grantees, failed to redeem within the time limited, his equity of redemption was barred and his title gone.

McLagan v. *Brown*, 11 Ill., 519.

This was an action in ejectment, and the facts appear in the opinion of the court. The court say:

> "The premises in question were sold to A. L. Holmes, under his judgment, on the 29th of August, 1846, who assigned his certificate of purchase to Cooney, on the 27th day of August, 1847, and he

assigned to Johnson, on the 24th of November, 1847. On the 10th of March, 1847, the judgment debtor conveyed the premises to W. Holmes and Mary Burgess. On the same day the Browns obtained their judgment, which, however, did not become a lien upon the debtor's real estate till the 23rd of the same month. They redeemed from the sale to A. L. Holmes, on the 27th day of November, 1847, two days within the fifteen months from the date of that sale, and resold the premises on the 21st day of December, 1847, and purchased them in at the amount of the redemption money, and took a sheriff's deed. Their judgment, under which they were redeemed, was reversed at the December term of this court, 1848.

It will be seen that the judgment debtor sold his equity of redemption to W. Holmes and Burgess, before the Brown judgment became a lien upon the premises. They, however, never redeemed, and the question is, could the last judgment creditors redeem from the first sale, after the expiration of the twelve months, within which the purchasers from the judgment debtor might have redeemed? We think, according to the decision in *Saveezy* v. *Chandler*, 11 Ill., 445, they did possess that right. In principle, there is no difference between that case and this, so far as this question is concerned. There the Chandlers were held to be the assignees of the judgment debtor, and as such, bound to redeem within the twelve months, although they obtained their title under a sheriffs' sale. Certainly Holmes and Burgess are none the less such assignees, because they obtained their title by a voluntary conveyance from the debtor. The rights acquired and duties imposed under either purchase were the same. Both had a right to redeem, which was paramount to the right of any judgment creditor, who had not acquired a lien before the date of their purchases; which right, however, they were bound to exercise within the twelve months, and if they neglected to do that, their rights of redemption were entirely and forever gone. They ceased to have any more rights

or interest in the premises than if they had never possessed the right of redemption. That right had expired by the lapse of time, and could not with propriety be thrust in between the conflicting claims arising under the sale upon the first judgment, and the right to redeem claimed under the last. Upon the termination of their rights, the case stood as if they had never existed, and had there been no assignment of the equity of redemption, the right of the subsequent judgment creditors to redeem would never have ben questioned. Allowing the right of redemption to the last judgment creditors is doing no violence to those who had no right to violate, and the purchaser under the first judgment cannot complain, for he purchased with the express condition imposed by the statute that 'any judgment creditor' might redeem after the expiration of twelve and within fifteen months from the date of his purchase."

Massey v. *Westcott*, 40 Ill., 160, was a bill in chancery by which redemption by a judgment creditor was questioned. The material facts appear from the portion of the opinion quoted:

"It is also contended by counsel for appellant that the redemption by Cooper was one day too soon, and, therefore, irregular and void. This is a question which in no wise concerns the appellant, and which he cannot raise. Neither the judgment debtor nor the appellant, as his grantee, sought to redeem within the twelve months allowed to them. Their title was, therefore, gone, so far as it depended upon the sale under the Till and Knevels' judgment, and whether it was conveyed by the sheriff to Till and Knevels as the purchasers under the execution sale, or to Cooper as a redeeming creditor, was immaterial to them. If Cooper's redemption was irregular, either Till and Knevels or any other person seeking to redeem might question it, but they seem to have accepted the redemption money and thereby waived any irregularity, if such there was, and persons not injured cannot complain. *Blair* v. *Chamblin*, 39 Ill., 521."

No other construction has ever been put upon said statute of 1845, as will appear from the many subsequent decisions of the Supreme Court of Illinois, cited under Sec. III of our brief (*supra*, p. 22).

The twentieth error assigned in the Supreme Court of Illinois, and the XV proposition of law submitted to the trial court presented this defense. Both were overruled, but the opinion of the majority of the Supreme Court of Illinois is silent upon this point. They do say, however, in the closing sentences of the opinion, that "the foreclosure was not abortive in any respect, but a sale was regularly made and approved by the court and a certificate of purchase issued and delivered to the defendant, which became void under the provisions of the statute through her neglect."

Mr. Justice WILKIN, however, in his dissenting opinion (Print. Trans., 266-9) states the law upon this point as we understand it. He says:

> "It is a rule of universal application that where a mortgagor, after foreclosure and sale, allows the time of redemption fixed by the statute and decree of foreclosure to expire without justifiable excuse, failing to make redemption, his rights are forever gone. * * * Therefore, upon the expiration of the time for redemption, the rights of McCune, as mortgagor, and of Prettyman, his grantee, were forever barred and foreclosed. Appellant was in the exclusive possession of the premises and had been for several months. Whether that possession, during the period of redemption, was so far by the acquiescence of the mortgagor or his grantee as to be lawful or not, there can be no serious question that after the expiration of the time for redemption she was the owner of the premises and entitled to the possession thereof, and, upon application to the master, entitled to a deed; and during the period of five years in which she might lawfuly have obtained a

deed there can be no serious claim that any right or title remained in the mortgagor, or his grantee, Prettyman. It is true that by failing to take a deed within the five years her right to do so became barred under the statute of 1872, but the question now is: Did the mortgagor, by that failure, become reinvested with the title, and if so, upon what principle did he do so? Manifestly, the statute of 1872, as one of limitation, affecting only the remedy of Mrs. Bradly to obtain a deed, could not operate to vest the title in any one else. To hold that it could would be to defeat the act upon the ground of its unconstitutionality. (*Ryhiner* v. *Frank*, 105 Ill., 326.)"

Upon the first hearing, *Lightcap* v. *Bradley*, 186 Ill., 531, the court expressed its views upon this point as follows:

"The relation created by the statute upon the sale of the premises was the only remaining relation between the parties. As against the purchaser, the mortgagor had only a right to redeem from the sale, and it is argued that because there was no redemption the title of the mortgagor was absolutely gone, and, therefore, he could never afterward assert title under any circumstances.

As we have seen under repeated decisions, the premises are discharged of the lien of the mortgage and the obligation is transferred into the new lien. Necessarily, the title is in the mortgagor, subject only to that lien, and while, as against it he has nothing but a right of redemption, as against all the rest of the world, he is the owner. He has a right of possession, and his estate is alienable and devisable as before. After twelve months his creditors may redeem, and an execution against his lands and tenements is levied, in such case, upon the land. If at a sale it brings more than the charges against it, he is entitled to the surplus as arising out of his property and estate. The certificate of purchase does not transfer title, but only assures to the purchaser a conveyance of the legal title if the premises are not

redeemed. If the certificate of purchase becomes null and void by virtue of the statute of limitations, or otherwise, so that the premises are freed from the lien, the mortgagor is then the absolute owner. The lien of the mortgage and the title of the mortgagee cease by operation of law when the debt or obligation is barred by the Statute of Limitations. (*Barrett* v. *Hinckley, supra.*) And there is no difference, in principle, where the limitation runs against the new lien in the form of a certificate of purchase.

In *Stephens* v. *Illinois Mutual Ins. Co.*, 43 Ill., 327, the question being whether a mortgagor had any insurable interest in the mortgaged premises after a decree of foreclosure and sale, it was held that he had, and the court said: 'His estate, as mortgagor, would not have been lost until the expiration of his right to redeem. In this state the purchaser under a sheriff's sale upon judgment and execution, or at a master's sale on foreclosure of a mortgage, acquires by his purchase no new title to the premises until the period of redemption has passed and he is entitled to a deed. His deed will relate back, it is true, to the beginning of his lien, in order to cut off intervening incumbrances, but it will not carry back the absolute divestiture of title as is evident from the fact that neither judgment debtor nor mortgagor can be called to account for rents and profits.' The mortgagor still has the estate of a mortgagor, but the amount and time of redemption have become absolutely fixed by the decree of sale. (2 Jones on Mortgages, Sec. 1661.) After the expiration of the period of redemption the title of the mortgagor would be entirely gone, in the sense that the purchaser had become absolutely entitled to a conveyance of it, and in this sense it has often been said that his title is gone, *but it is never actually out of him until* a conveyance is made."

This may be considered the strongest statement the court were able to make of their views and holdings upon the question under consideration. No authority is cited,

and none exists, to support the claim that "in this sense we have held, etc." On the contrary, all the authority, both of courts and text writers, is the other way. Some of these we have already quoted. Many more are referred to in our brief. One of these we will quote, because it is a late case, the circumstances are the same as in the McCune case, and the decision depended upon the question whether the mortgagor had any title of any kind after his time for redemption expired.

Burgett v. *Osborne*, 172 Ill., 227 (238), where it is said:

> "A foreclosure decree had been rendered against the appellant, Heffron, for a very large amount; and, under this decree, the hotel property, located upon Lots 15 and 16, had been sold to Horace E. Hurlbut on March 19, 1894, for $146,747.15. A certificate of purchase was issued by the master in chancery, who made the sale, to Hurlbut. The time of redemption allowed Heffron to redeem from this sale, expired on March 19, 1895. On April 17, 1895, the certificate of sale was transferred to the appellant, Frank S. Osborne. When such transfer was made, Heffron had no interest whatever in the property. His right to redeem, which lasted during the year from March 19, 1894, to March 19, 1895, had expired. During the three months thereafter up to June 19, 1895, only his judgment creditors had a right to redeem."

And because all his right, title and interest of every kind are gone upon his failure to redeem, the mortgagor cannot object to any irregularities in the sale made by a redeeming creditor, as he is not injured. *Bozarth* v. *Largent*, 128 Ill., 95 (107, 108). And for the same reason the sale upon such junior judgment "is of nothing that belongs to him." *Smith* v. *Mace*, 137 Ill., 68 (78), and cases cited.

The language in the majority opinion, upon the author-

ity of *Smith* v. *Smith*, 32 Ill., 198; *Seligman* v. *Laubheimer*, 58 Ill., 124; *Ogle* v. *Koerner*, 140 Ill., 170, and *Davis* v. *Dale*, 150 Ill., 239, that "the sale discharged the land from the trust deed" (Print. Trans., 263), was not that, *prior to* or *without* the statute of 1872, the legal title, which was absolute at law in the mortgagee, was upon the sale divested and revested in the mortgagor or his grantee, without any redemption or payment. That would be a too obvious misunderstanding of those cases, which were cases in equity and did not so rule or involve any such question or the question of the legal title at all. Indeed, the equitable rule here cited only applies *where the sale has realized the whole amount of the debt, interest and costs which are due;* and that was not the case here. *Bogardus* v. *Moses*, 181 Ill., 551 (559); *Davis* v. *Dale*, 150 Ill., 239. But the ruling of the opinion here is, in effect, that the estates and rights of the mortgagor and mortgagee, respectively, were changed by that statute of 1872, and the legal estate and right of the mortgagor enlarged and the estate and right of the mortgagee lessened, as follows:

Under the law existing at the time this mortgage was made, the only right of the mortgagor, after condition broken, was that he could regain the legal estate, and that only by payment or redemption. Before foreclosure in equity he had only the equitable right of redemption, which he could avail himself of only by resorting to a court of equity. After sale under foreclosure decree he could redeem therefrom only in the mode prescribed by the statute and within one year. At the expiration of that period *all his right was forever gone.* Under the same law, the mortgagee purchasing at the sale had the absolute unconditional right either to receive full payment according to

the redemption law or to hold the possession as well as receive the legal title to the land purchased; and the legal title given by the mortgage was in aid of that right. *Williams* v. *Brunton*, 3 Gilm., 622-23; *Kruse* v. *Scripps*, 11 Ill., 104; *Farrar* v. *Payne*, 73 Ill., 88.

On the other hand, by force of this statute of 1872, the mortgagor's right of redemption is enlarged into a legal estate, which does not depend upon the condition of making any redemption or payment whatever, but is created and made perfect and freed from all claim or defense or right to hold possession, of mortgagee or purchaser, upon the happening of a new event. And the mortgagee's legal title, and the equitable title of the purchaser, fortified by actual possession, and so unaffected by any statute of limitations, is taken away.

The language of the majority opinion of the state court above quoted that the foreclosure sale under the decree in equity "discharged the land from the trust deed and transferred the lien created by the contract into a statutory lien by the certificate of the purchase" appears to be the basis of the opinion. As here applied in a suit at law in ejectment, to divest the legal title in the mortgagee and to vest it in the mortgagor, without any redemption or payment, it was never laid down as the law in Illinois. The cases of *Smith* v. *Smith*, 32 Ill., 198; *Seligman* v. *Laubheimer*, 58 Ill., 124; *Ogle* v. *Koerner*, 140 Ill., 170, and *Davis* v. *Dale*, 150 Ill., 239, cited in support, are not authority for any such ruling. Those cases were all suits in equity where a mortgage is regarded as a mere lien, and the rule as to the nature and effect of a mortgage as a conveyance of title is different from that at law; in none of them was the question of the legal title, nor the question presented in this case, in any way involved. In

Smith v. *Smith* the only question was whether a foreclosure could be had upon the unmatured portion of the mortgage debt, or whether the decree should provide for the payment, out of the proceeds of sale, of notes not due. Nothing was held as to the effect of the foreclosure sale upon the title. In *Seligman* v. *Laubheimer* the only question involved was as to the effect of a redemption by a second mortgagee from foreclosure sale under first mortgage, viz.: Did such redemption leave the land still subject to the unpaid portion or deficiency of the foreclosure decree under the first mortgage? The ruling was that it did not; that the redemption by the holder of the second mortgage was not such a mere delusion or trap for the unwary as would be the case if it resulted in leaving the land still subject to a second sale to pay the balance of the first mortgage debt. The same question and ruling are found in *Ogle* v. *Koerner*. In *Davis* v. *Dale* the ruling was that when the mortgaged *premises were bid off by the mortgagee, at the foreclosure sale, for the full amount of the decree, interest and costs*, the owner of the equity of redemption, and not the purchaser, is entitled to the possession and rents, during the period of redemption, and in any event, if held by a receiver, the possession and receipt of rents by the receiver would be for the benefit of the person entitled to the same. What was said by the court there must be taken as applicable to the case in equity before the court. And the same limitation of the rule to cases where the sale brought the full amount of the decree, was laid down in *Bogardus* v. *Moses*, 181 Ill., 554 (559); and it was recognized that a different rule would be applicable if there had been a deficiency (p. 560).

None of those cases justify a ruling at law in ejectment

that upon the sale under a foreclosure decree in equity the mortgagor becomes reinvested with the legal title; or that after his right of redemption has expired, and the purchaser's right to a deed (and so his equitable title) has become absolute, and is fortified by possession, the mortgagor, or his grantee, can, without redemption or payment, recover the premises, because the enactment of a limitation statute has cut off the purchaser's remedy of getting the master's deed. None of those cases was intended to overrule the rule laid down in *Williams* v. *Brunton*, 3 Gilman, 623; *Kruse* v. *Scripps*, 11 Ill., 104, and *Farrar* v. *Payne*, 73 Ill., 88, that the foreclosure decree and sale thereunder to the mortgagee is consistent with and in aid of the title conveyed to him by the mortgagee, and not in destruction thereof.

The law as it stood at the date of the McCune mortgage constituted a part of its obligation. Plaintiff in error is, therefore, entitled to have said statute of 1845 enforced in the foreclosure of that mortgage; and if said statute of 1872 materially affects this remedy, it violates Sec. 10, Art. 1 of the federal constitution.

III.

The decision of the Supreme Court of Illinois in this case deprives plaintiff in error of her title to the premises in controversy without due process of law, contrary to the fourteenth amendment of the federal constitution.

Plaintiff in error had a vested title to said premises after breach of condition, while the grantor of defendant in error had only an equity of redemption.

After the foreclosure, purchase and expiration of re-

demption she had the whole title to the premises and was in possession under that title.

The authority for these claims must be found in the decisions of the courts of last resort in Illinois, a few of which are cited in our brief. We will quote briefly from one or two.

Carroll v. *Ballance*, 26 Ill., 9, is considered a ruling case upon this question. Mr. Justice BREESE in that case said (p. 16):

> "The questions presented by this record are: Can a mortgagee, the mortgage debt being payable by installments, for which separate notes are given, recover the mortgage premises in ejectment against the mortgagor, or those claiming under him, when one or more notes are due and unpaid, and without notice to quit to the party in possession, before action brought?"

And again:

> "This court has held, in accordance with rulings of the English courts of common law jurisdiction, that as an incident to this ownership in the mortgagee, he can enter before condition broken or bring ejectment. He is considered the owner of the fee, having the *jus in re* as well as *ad rem*, and being so, is entitled to all the rights and remedies which the law gives to such an owner. *Delahay* v. *Clement*, 3 Scam., 202; *Vansant* v. *Allmon*, 23 Ill., 33."

The English and American cases are then reviewed at some length, and the conclusion reached is expressed in the following language (p. 20):

> "We think it is settled that a mortgagee may maintain ejectment, on condition broken, without notice to quit, and that the condition is broken when one or more installments are due and unpaid; because, the condition being an entirety, it is indivisible, and a failure to pay any part of the debt is a breach of the condition."

In *Chickering* v. *Failes,* 26 Ill., 507 (519), it is held:

"By the mortgage deed the legal title passes to the mortgagee, but in equity, the right of redemption remains in the mortgagor, even after the condition broken. But at law, after condition broken, the mortgagee may bring his ejectment and recover possession. The mortgage is a deed of conveyance with a condition annexed, and purports on its face to convey the title, but the condition authorizes the mortgagor to defeat the title thus conveyed and to reinvest it in himself, by a performance of the condition. After a failure to perform the condition, the title apparently becomes absolute in the mortgagee, and is clearly color of title."

In *Mulvey* v. *Gibbons,* 87 Ill., 367 (382), the court said:

"At the date of the decre (a decree *nisi* in strict foreclosure) and for a considerable time afterward, the property was worth very much less than the amount due of the mortgage debt. The decree determined the rights of the parties, that unless the amount due was paid within thirty days, the defendants should be debarred from all equity of redemption, of the premises. There is no pretense of the payment of any part of the money, or of excuse for non-payment, or of any readiness or disposition to pay anything. Why, in reason and justice, should not the right of redemption be barred as the decree declared?

The absence of a further order of confirmation was here a lack of but the merest technical form. According to the rule as laid down by Daniell, if the defendants did not pay the money the plaintiff's right to the property became absolute, though in order to complete his title there must have been a final order confirming it.

If the plaintiff's right to the property had become absolute, how, before a court of equity, could that consist with any remaining right of redemption in the defendants? Why, in that court, where the real right, regardless of form, is regarded and given

effect to, should not such an absolute right, as thus declared, be recognized and asserted?

"In *Kenyon* v. *Shreck*, 52 Ill., 383, this court recognize and declare the principle that the right of a mortgagor or his grantees to redeem after condition broken is a purely equitable right, which can be asserted only in a court of equity, and when its assertion would be plainly inequitable, that court will withhold its aid; and that where a defective foreclosure has been had, such equity of redemption will not be permitted to be asserted against an equity still stronger. And see *Hamilton* v. *Lubukee*, 51 Ill., 420; *Munn* v. *Burges*, 70 *id.*, 604; *Bush* v. *Sherman*, 80 *id.*, 160."

In *Bronson* v. *Kinzie*, 1 How., 311 (318), this court held the law of Illinois to be as follows:

"According to the long-settled rules of law and equity in all of the states whose jurisprudence has been modeled upon the principles of the common law, the legal title to the premises in question vested in the complainant (mortgagee), upon the failure of the mortgagor to comply with the conditions contained in the proviso; and at law, he had a right to sue for and recover the land itself. But in equity, this legal title is regarded as a trust estate, to secure the payment of the money; and, therefore, when the debt is discharged, there is a resulting trust for the mortgagor. *Conard* v. *The Atlantic Insurance Company*, 1 Pet., 441. It is upon this construction of the contract that courts of equity lend their aid either to the mortgagor or mortgagee, in order to enforce their respective rights. The court will, upon the application of the mortgagor, direct the reconveyance of the property to him, upon the payment of the money; and, upon the application of the mortgagee, it will order a sale of the property to discharge the debt. But, as courts of equity follow the law, they acknowledge the legal title of the mortgagee; and never deprive him of his right at law until his debt is paid; and he is entitled to the aid of the court to extinguish the equitable title of the mortgagor, in order that he

> may obtain the benefit of his security. For this purpose, it is his absolute and undoubted right, under an ordinary mortgage deed, if the money is not paid at the appointed day, to go into the court of chancery and obtain its order for the sale of the whole mortgaged property (if the whole is necessary), free and discharged from the equitable interest of the mortgagor. This is his right, by the law of the contract; and it is the duty of the court to maintain and enforce it, without any unreasonable delay."

If the title to the mortgaged premises was vested in plaintiff in error by the law of the land as promulgated by the courts of last resort at the date of the mortgage contract, a subsequent change of that law by a court of last resort, the effect of which is to deprive plaintiff in error of her title or her right of possession is a public act, by and under the authority of the state, and within the prohibition of the Fourteenth Amendment of the Federal Constitution.

A few quotations from the many decisions of this court upon this point will confirm this statement.

In *C., B. & Q. Ry.* v. *Chicago*, 166 U. S., 226, the property of the railroad company was taken for a street in condemnation proceedings which were regular according to the statute, but the verdict of the jury and the judgment of the court awarded only nominal damages, $1. This proceeding was alleged to be in contravention of the Fourteenth Amendment, taking property without due compensation. The court said in part:

> "But a state may not by any of its agencies disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."

And much more is there said, both in the opinion of the majority and in the dissenting opinion, confirming the correctness of the contention we are making in this case, viz.: that if the equitable title once vested in plaintiff in error by the acts of the parties under the law as then understood and promulgated, it cannot be afterwards divested by a change of judicial holding.

In the case of *Bank of Kentucky* v. *Stone*, affirmed in this court without opinion, May 15, 1899, the charter of the bank exempted it from taxation for a certain time, and the Supreme Court of the state construed the charter as a contract which could not be repealed. Afterwards, however, the same court changed its views and upheld a tax levied against the bank. In the Circuit Court the published opinion seems to indicate that this was the material point in the case and their opinion holding that such a change of judicial construction was a violation of constitutional restrictions was apparently affirmed by this court. (88 Fed. Rep., 383.)

In *ex parte Virginia*, 100 U. S., 339, the constitutional question arose upon indictment of a county judge for excluding negroes from the jury list. Held, that his act was in violation of the Fourteenth Amendment, since he represented the state, was clothed with power to act by the state, and through him the state deprived negroes of rights guaranteed by the constitution. In this case the act was not judicial, but administrative.

In *Scott* v. *McNeal*, 154 U. S., 34, the federal question was whether the Fourteenth Amendment of the Constitution was violated by a decision of the State Court in an action of ejectment sustaining the title of defendant in error, who derived title through an administrators' sale, where it subsequently developed that the person whose estate was administered was not dead.

The court said (p. 45):

> "The 14th Article of Amendment to the Constitution of the United States, after other provisions which do not touch this case ordains, 'Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person with its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislative, its executive or its judicial authorities." Citing *Virginia* v. *Rives*, 100 U. S., 313, 318, 319.

In this case it is submitted that the State of Illinois by this act of 1872 of its General Assembly, as construed and given effect to here by its Supreme Court, plaintiff in error has been deprived of her property without due process of law, and her contract rights have been impaired.

IV.

Plaintiff in error had an equitable title to the mortgaged premises at the time when she was entitled to a deed from the master January 27, 1881; and if said title was not divested when the certificate of purchase became "null and void" under the statute of 1872, then this title is sufficient to bar the action of defendant in error.

The statute of Illinois, which was first enacted in 1835, and is set forth at page 18, *supra*, protects such title.

The evidence shows that from and after the time when the period of redemption expired, the plaintiff in error, by her tenants, possessed said land by actual residence thereon for more than seven successive years. (Print. Trans., 38.) At that time Mrs. Bradley had "a connected title, in law or equity, deducible of record from the United States." This chain of title is in evidence. (Print.

Trans., 62 to 89, 95, 141, 142.) The mortgage trust deed to Johnson, her trustee, is to be regarded as conveying the legal title, which may be here invoked for her. But her title "in equity" was complete within this statute, if she could not invoke that legal title in Johnson, trustee. Her right to a master's deed conveying to her the legal title, became complete on January 27, 1881, when the period for redemption expired. That right, which was then complete, gave her a complete title in equity; and the legal title was in trust for her; and her possession by residence under such title having continued over seven years, this statute furnished a complete bar to the action of ejectment.

In *Collins* v. *Smith*, 18 Ill., 160, it was held that the language of the act "having a connected title in law or equity deducible of record," embraced the title in equity by a resulting trust; and that the title was "deducible of record" to every person who could connect himself with it by such proofs as are competent for any purpose to establish the kind of title under which he claims; and that "although an equity link would not sustain an ejectment suit under the statute, it may defeat it, and so may be put in by parol evidence, when it is of a character to be established by that character of parol." And such was the rule of construction of the statute in Kentucky, from which state this statute and its construction was adopted by Illinois.

Poage's Heirs v. *Chinn's Heirs*, 4 Dana, 4.
Collins v. *Smith, supra.*
Martin v. *Judd*, 81 Ill., 488.

And the same construction and effect was given to this act by this court in *Dolton* v. *Cain*, 14 Wall., 472, where the court said:

"It is objected that the entire title of the defendant is not evidenced by acts of record, but this is not necessary. If the source or foundation of the title is of record, it is available to every person claiming a legal or equitable interest under it, who can connect himself with it by such evidence as applies to the nature of the right set up. (*Collins* v. *Smith*, 18 Ill., 163; *Poage's Heirs* v. *Chinn's Heirs*, 4 Dana, 4.) Is the right set up by Cain, then, within the purview of the statute? It is conceded to be, if the bond was executed under a valid power of attorney, coupled with full payment of the purchase money, and the obligor had the legal title to the land. This concession was necessary, because it is too plain for controversy that the union of these elements would constitute a complete equitable title, which a court of chancery on the proper application would perfect into a legal title."

This was the law of Illinois when the mortgage contract in question was made, and as such was a part of that contract. It was a valuable part of the contract and of the property right acquired by plaintiff in error thereunder, of which she could not be deprived.

Bronson v. *Kinzie*, 1 How., 311.

In other words, under this contract, as a part of the security acquired by Mrs. Bradley, a purchaser at the mortgage sale who should be in possession of the premises, upon the expiration of the period of redemption, and who should have possession by residence thereof, by himself or his tenants, for seven consecutive years, could not be ousted therefrom by the mortgagor or his grantee, although he might never secure the master's deed. The master's deed was not a necessary or important muniment of title. And the equitable title being complete at the very instant when the period of redemption expired and the right to the master's deed had accrued, the certificate

of purchase became at that instant *functus officio*. The "lien" of the certificate of purchase (as it is called in some of the opinions in equity cases cited by the majority opinion of the said court) became merged into a complete equitable title at the very instant when the period of redemption expired. It was no longer a lien, but was a complete equitable estate.

Now, by the provision of the act of 1872 in question that "when such deed is not taken within the time limited by this act"—which is five years after the equitable title so becomes complete—"the certificate of purchase shall be null and void", as that provision is construed and applied by the Supreme Court of Illinois in this case, this contract right of plaintiff in error is plainly impaired. Instead of a *complete* equitable estate in the purchaser at the expiration of the period of redemption, there is, by force of this state, at most, a *base* or *determinable* estate, which is determined and ended, *ipso facto*, by the failure of the purchaser, although in possession, to get a further muniment of title, which was theretofore unnecessary.

This defense has been presented on every hearing before the Supreme Court of Illinois. (See proposition of law XVII, Trans. p. 285.) No comment is made upon this point in the opinion upon the last hearing. No doubt that court considered it had said enough upon this point on the previous hearing.

At that time in *Lightcap* v. *Bradley*, 186 Ill., 511, the court said (p. 530):

> "The second claim, under Section 4 of the Limitation Act, is even less tenable than the other. Under that section something more than mere color of title is required. The title must be such as is *prima facie* good, and such as courts will enforce unless rebutted or destroyed by evidence of a better title. (*Moore*

> v. *Brown*, 52 U. S., 414.) Inasmuch as the land had been freed by the sale from the lien of the trust deed, and the certificate of purchase did not pass title but was only an inchoate right to a title upon a certain condition, the defendant showed no title under Section 4."

But a purchaser has a complete equitable title when he is entitled to and may compel a conveyance.

Dolton v. *Cain*, 14 Wall., 472, 476.
Chappell v. *McKnight*, 108 Ill., 570, 575.

And plaintiff in error had a right to a deed, and so had a complete equitable title when the time for redemption had expired, and she became entitled to the master's deed. That right was not any longer *"inchoate,"* but was a then present, complete and unconditional right.

We understand the passage above quoted from, 186 Ill., to mean that the Supreme Court of Illinois holds that after the foreclosure, sale, purchase by plaintiff in error and expiration of the period of redemption, plaintiff in error had no equitable title, "inasmuch as the land had been freed, by the sale, from the lien of the trust deed." But if that were so, this equitable title, which was derived through the sale and the expiration of the period for redemption, was not affected by that fact. But, as we have shown, that was never before the law as to the property sold, so as to affect the legal title to the property covered by the sale.

That a foreclosure and sale for a part of the mortgage debt releases the land from any further lien for the remainder of the debt is a necessary consequence. The cases cited by the courts in support of the foregoing text (*Smith* v. *Smith*, 32 Ill., 198, and *Rains* v. *Mann*, 68 Ill., 264) are to that effect, but do not support the court

in the conclusion that the trust deed is released *as to the amount bid*. It would be absurd to suppose a mortgagee who bought at his own sale would thereby diminish his title.

The statement by the Supreme Court of Illinois, in connection with the foregoing quotation, in commenting upon *Williams* v. *Brunton*, that "the very case cited, upon which the decision of the court rested (*Den* v. *Stockton*, 7 Halst., 322), decided that a sale does divest or suspend the legal estate or right of possession of the mortgagee," is a mistaken one. On the contrary, it is decided in that case (*Den ex Dem. Hart* v. *Stockton et al.*, 7 Halst., 322; 12 N. J. L., 370) that the mortgagee, after foreclosure, sale and purchase at his own sale may maintain ejectment against the mortgagor. The court there said:

> "These proceedings, although held by the defendants to be entirely void, are supposed to interfere with and destroy all right of action on the original mortgage. But why this should be the effect of them it is not easy to discern. By bidding at the sheriff's sale, and accepting a deed, Jane Hart acknowledged no title inconsistent with her own. That act was intended to come in aid of her mortgage, and to perfect her title. Such would be its effect if the proceedings are valid. But if they are void, it is not perceived how they could take away her rights of action on her mortgage. There is nothing in the nature of these proceedings which divests, or suspends, the legal estate and right of possession, until a sale takes place. By that, the estate of both mortgagor and mortgagee are transferred to the purchaser. In this case, Jane Hart was herself the purchaser, and of course, if the sale was valid, has a right to recover by virtue of it; but if not valid, her mortgage title must remain. A mortgagee may bring ejectment pending a bill to foreclose. There may be circumstances under which a court of equity will interfere,

but when it does, it generally requires the mortgagor to give security to redeem. Powell on Mortgages, 477."

We have already cited and quoted abundant authority to show that the foreclosure and sale are connected with and in aid of the original title in the mortgagee.

Further light is thrown upon the relations of mortgagor and mortgagee and purchaser by *Bruschke* v. *Wright,* 166 Ill., 183. There was a foreclosure and sale of the premises to one Gehr for the amount of the mortgage debt, with a supplemental agreement to pay the heirs of the mortgagor in addition to the amount bid, the balance of $10,000, before taking deed. The purchaser, Gehr, having to borrow money, assigned the certificate to Wright, who knew nothing of the agreement. After expiration of redemption Wright applied for a deed, and this was resisted by the heirs of the mortgagor.

In considering the relations of the parties the court say (p. 195):

"We regard the doctrine of subrogation as applicable to such a case as is here presented. Inasmuch as the money advanced by Wright was used for the purpose of paying off the mortgage upon the property, a court of equity will subrogate Wright to the rights of Troost, the original mortgagee, and regard the decree, which was in fact paid off by the proceeds of the master's sale, as subsisting for the purpose of being enforced for the benefit of Wright. The general doctrine is, that a purchaser at a foreclosure sale will be subrogated to the rights of the holder of the mortgage, which has been discharged with the purchase money, in the event that the sale is ineffectual to convey title to the property sold.

In *Brobst* v. *Brock,* 10 Wall., 519, it was held, that an irregular judicial sale, made at the suit of the mortgagee, even though no bar to the equity of redemption, passes to the purchaser at such sale the rights of the mortgagee as such."

If plaintiff in error by purchasing at her own sale, became subrogated to the trust deed, to the extent of her bid, she has an equitable title.

Such, at least, was the law in Illinois at the date of the mortgage contract.

If the change in the law be ascribed to the statute of 1872, it comes under the prohibition of Sec. 10, Art. 1 of the Federal Constitution.

If the change in the law be the result of altered judicial construction of the mortgage contract, which results in diverting the equitable title plaintiff in error had under the law as it was promulgated at the date of her mortgage contract, then it comes under the prohibition of Sec. 1 of the Fourteenth Amendment to the Federal Constitution.

But if such equitable title has not been divested in either of said ways, then it fulfills all the requirements of said statute. Sec. 4, Ch. 83, Rev. Stat. Ill. (quoted, *supra*, p. 18).

This is the same statute as Sec. 8, Ch. 66, Rev. Stat. 1845, referred to in *Collins* v. *Smith*, 18 Ill., 160, from which we quote to show that a resulting trust is, within the meaning of said statute, an equitable title. The court there say:

> "In deraigning title from an administrator's sale and deed, made under an order of sale for the payment of debts of deceased, the plaintiff offered to prove a resulting trust, by showing the purchase money paid at the administrator's sale to have belonged to Joseph, William and Samuel McClintock, and that Thomas McClintock, who bid off the land and paid the money, acted as their agent, and did so for them.
>
> A parol agency to buy or sell land is good (*John-*

son v. *Dodge,* 17 Ill. R., 433), and the agent is a competent witness to prove his agency, as between his principal and a third person. *Cadwell* v. *Meek et al.,* 17 Ill. R., 220. And parol evidence is admissible to prove a resulting trust in lands, and is an exception to the general rule requiring written evidence under the statute of frauds and perjuries. Rev. Stats. 1845, p. 259, Sec. 4; Adam's Eq., 165, note 1; *Enos et al.* v. *Hunter,* 4 Gil. R., 218-19; *Boyd* v. *M'Lean,* 1 John. Chan. R., 582.

The declarations or admissions of the nominal purchaser are always admissible to establish the fact of payment by the *cestui que trust,* or the ownership of the money. Adam's Eq. 156, note 1; *Malin* v. *Malin,* 1 Wend. R., 626; *Pierce* v. *McKeehan,* 3 Penn. State R., 136; *Harden* v. *Harden,* 2 Sandf. R., 17; *Lloyd* v. *Carter,* 17 Penn. State R., 216; *Peabody* v. *Tarbell,* 2 Cush. R., 232; *Pinney* v. *Fellows,* 15 Verm. R., 525; *Barron* v. *Barron,* 24 *id.,* 375.

It would seem to result, as a legal conclusion from these several principles, that Thomas McClintock, the supposed nominal purchaser and agent for the alleged *cestui que trust,* was a competent witness, and the plaintiff was entitled to prove the facts proposed and in the mode proposed, unless the title thus made out was insufficient and inadmissible as a foundation for the statute of limitations.

Such was the opinion and ruling of the court below, but we think the title sufficient to defend under the statute. Rev. Stats. 1875, pp. 349-50, Secs. 8, 9, 10 and 11. The court, in *Poage's Heirs* v. *Chinn's Heirs,* 4 Dana R., 54, construed a similar statute of Kentucky of 1809, to embrace an equitable title. And they allowed that title to be proved by such evidence, parol or otherwise, as was proper to establish the several links in the chain. Parol proof was received to establish a descent and heirship, also tenancies and possession under leases. And it was held that the possession and residence of the tenant should inure to the benefit of the landlord, as his pos-

session and residence, in making out a residence for seven years under statute."

We therefore maintain that plaintiff in error, as *cestui que trust* in the trust deed of McCune to Johnson, held such equitable title as is contemplated by Sec. 4, Chap. 83, Rev. Stat. Ill., and that, as the proof of Prettyman's title is admitted, this equitable title of Mrs. Bradley is deducible of record from the United States. The evidence of possession by residence of her tenants and claim of ownership from and after 1880 is undisputed. The payment of taxes is conceded. These facts constitute a perfect bar to defendant in error's action under said statute of 1835 as construed in the following cases:

Irving v. *Brownell*, 11 Ill., 402.
Collins v. *Smith*, 18 Ill., 160.
Dolton v. *Cain*, 81 U. S. (14 Wal.), 472.
Martin v. *Judd*, 81 Ill., 488.
Gregg v. *Tesson*, 66 U. S. (1 Black), 150.
Dredge v. *Forsyth*, 67 U. S. (2 Black), 563.

But the Act of 1872 is herein construed and applied by the Supreme Court of Illinois to have the effect of destroying her complete equitable title and the legal title in her trustee, although fortified by her possession rightfully acquired; or at least to have the effect of changing such title from an absolute one into a conditional one which should be dependent upon her taking out a master's deed, and should *ipso facto* terminate at the expiration of five years if she should fail to take out such deed. And by such statute, the mortgagor's right of redemption is not merely extended beyond the period limited by the law in force when this mortgage was made, but is enlarged into

a perfect title in fee simple, upon the event of such failure on her part to take such deed within the time limited.

It is submitted that the judgment of the Supreme Court of Illinois should be reversed.

Respectfully submitted.

JOHN S. MILLER,
MERRITT STARR,
W. W. HAMMOND,
For Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 243.

LYDIA BRADLEY, PLAINTIFF IN ERROR,

v.

H. W. LIGHTCAP, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OF THE CASE.

On July 13, 1895, the defendant in error, H. W. Lightcap, commenced five ejectment suits in the circuit court of Mason County, Illinois, against tenants of plaintiff in error, Lydia Bradley, to recover the land in controversy, which is situated in Mason County. On motion of the defendants in the ejectment suits, the venue in all the cases was changed to Fulton County.

After the change was made, Mrs. Bradley was substituted as defendant in each case, and by agreement of the parties, the five suits were consolidated under the title of H. W. Lightcap, *v.* Lydia Bradley.

At the March term, A. D. 1896, of the Fulton County Circuit Court, jury was waived, and the cause tried by the court, who found the defendant not guilty, and rendered judgment against the plaintiff for costs, from

which finding and judgment, the plaintiff Lightcap, appealed to the Supreme Court of Illinois. On that appeal, the case was three times argued before the court, and on October 19, 1900, the Supreme Court of Illinois filed its opinion, reversing and remanding the cause. The case will be found reported in 186 Ill., 510 to 537.

The remanding order was filed and the case redocketed in the Fulton County Circuit Court at its January term, 1901.

At the May term, 1901, of said court, the cause was again tried with the intervention of a jury, and upon the completion of the evidence, the trial court, on plaintiff's motion, directed the jury to return a verdict in favor of plaintiff, which was accordingly done, and judgment against defendant for costs, etc., rendered. From this judgment, the defendant, Mrs. Bradley, prayed for and obtained an appeal to the Supreme Court of Illinois, which appeal she subsequently abandoned.

At the September term, 1901, of said circuit court, the defendant, Mrs. Bradley, paid the costs and took a new trial, under the statute of Illinois, which provides that either party in an ejectment suit, against whom judgment is rendered, may have the judgment vacated, and a new trial of the cause at any time within one year after judgment upon payment of all costs therein. (See Chap. 45, Sec. 35, Starr & Curtis' Annotated Statute of Illinois, Vol. 2.)

While the cause was pending for new trial the defendant, Mrs. Bradley, sought to enjoin the further prosecution of the ejectment suit by bill filed by her for that purpose in the United States Circuit Court for the Northern District of Illinois, on November 12, 1901, to which bill a demur was sustained and bill dismissed, and Mrs Bradley appealed the case to this court, where it is now pending as Bradley *v.* Lightcap, No. 343; after failing to obtain an injunction in the United States Circuit Court, she sought to enjoin the ejectment suit by bill filed by her for that purpose in the said Fulton County Circuit Court May 26, 1902, to which also a demurrer was sustained and bill dismissed. She appealed the last

cause to the Supreme Court of Illinois, which sustained the decree of the lower court, (for the opinion of the Supreme Court of Illinois sustaining the lower court in dismissing the bill. See Bradley *v.* Lightcap, 202 Ill., 154).

This last case Mrs. Bradley has brought into this court where the same is now pending as Lydia Bradley *v.* Lightcap No. 306.

After the disposition of the two chancery suits above referred to, the ejectment suit was tried for the third time in the Fulton County Circuit Court at its September term, 1902, which resulted in a finding and judgment for the plaintiff therein from which Mrs. Bradley took an appeal to the Supreme Court of Illinois, where the judgment of the lower court was affirmed. (See Bradley *v.* Lightcap, 201 Ill., 511); and Mrs. Bradley has brought the cause into this court, so that this court now has the entire litigation before it in the shape of three cases, each entitled Lydia Bradley *v.* H. W. Lightcap, and numbered on the docket of this court 243, 306 and 343.

On the trial of this cause (ejectment), defendant in error, Lightcap, proved title in himself by a regular chain of conveyances from the United States, by patents to Abijah Taylor, Jr., thence by mesne conveyances to himself.

The plaintiff in error on the last trial of this cause, produced no paper or record title, but rested her defense on the question of the validity of Sec. 30, of an Act of the General Assembly of the State of Illinois, approved March 22, 1872, in force July 1, 1872, relating to judgments and decrees, which section limits the time within which a deed can be made on a certificate of purchase issued by a sheriff or master in chancery upon a sale in pursuance of a judgment or decree of foreclosure, etc., as the same relates to or bears on the following state of facts, which appear in the case, viz.: On August 13, 1868, one Absalom McCune, then being the owner of the land in controversy, executed to the plaintiff in error, Lydia Bradley, three promissory notes for five thou-

sand dollars each, due in 1, 2, and 3 years from date, drawing ten per cent. interest, and to secure the payment of the same, said McCune, on the same day executed to one E. G. Johnson, as trustee, a trust deed in the nature of a mortgage on the land in controversy. Subsequent to the trust deed, but before the foreclosure suit was commenced, McCune conveyed the land to B. S. Prettyman.

Default was made in the payment of the notes and interest, and Mrs. Bradley and E. G. Johnson, the trustee, he also acting as her solicitor, filed a bill in chancery to the March term, 1872, of the Mason County Circuit Court, to subject the land in controversy, and other lands, to the payment of the said notes. Upon the final hearing of that cause, the circuit court of Mason County, at its August term, 1879, to wit: August 22, 1879, found the amount due Mrs. Bradley on her notes, etc., to be $31,500, and entered a decree and order of foreclosure of the trust deed to Johnson and sale of the land by the Master in Chancery of Mason County as in ordinary foreclosure and sales. In pursuance of the decree and order of the court, the Master proceeded to advertise and make sale, which sale was made by the Master in Chancery on the 27th day of October, 1879, and Mrs. Bradley bid the sum of $10,000 therefor, and she being the highest bidder, the lands were struck off to her, and she received a certificate of purchase from the Master in the usual form, which entitled the holder thereof to the redemption money if redemption was made, or to a deed for the land, if not redeemed within fifteen months from day of sale. The Master reported his acts to the court, which was approved by the court Nov. 29, 1879.

The land was vacant and unoccupied, and in 1872, pending the foreclosure proceeding, Mrs. Bradley took possession of the premises, and by her tenants continued to hold possession up to the time of the commencement of the ejectment suits, and is still in possession. No deed was ever taken out on the certificate of purchase. The defendant in error purchased the land from Pretty-

man and received his deed therefor on September 4, 1893, and on the refusal of plaintiff in error to deliver possession to him, commenced the five ejectment suits which constitute this cause.

In the lower courts, it was insisted on the part of plaintiff in error that inasmuch as the section of the statute (Sec. 30 of Chap. 77) hereinbefore referred to was passed and went into effect subsequent to the date of the McCune trust deed to Johnson, which was foreclosed and land sold by the Master in Chancery under and by virtue of the decree and order of the court, it did not operate on the certificate; that to hold the statute did operate on the certificate of purchase and thereby it became null and void, if the deed was not taken out within five years as the statute provides, impaired the obligation of the contract, and rendered the statute obnoxious to Sec. 10 of Article 1 of the Constitution of the United States, also to Sec. 14 of Article 2 of the Constitution of Illinois, both of which are substantially the same and forbid the passage of any law impairing the obligation of contracts; also that the said statute as construed and as applied by the Supreme Court, contravenes Sec. 1 of the 14th Amendment to the Constitution of the United States and Sec. 1979 of the revised statute thereof, in as much as plaintiff in error claims she is deprived of her property, without due process of law.

While the assignment of errors both in this court, and the court below, are voluminous, we believe the court will find the above is a fair statement of the errors claimed and upon which its jurisdiction, if any, exists.

BRIEF.

I.

Sec. 30 of Chap. 77 of the Illinois Statute complained of, is a statute of limitation, and so held to be by the Supreme Court of Illinois.

Ryhiner *v.* Frank, et al., 105 Ill., 326, 330.

Peterson *v.* Emmerson, 135 Ill., 55, 60.

Seeberger *v.* Weinberg, 151 Ill., 369, 382.
Brown *v.* Ridenhower, 161 Ill., 239.
Lightcap *v.* Bradley, 186 Ill., 510, 515.
Bradley *v.* Lightcap, 201 Ill., 511, 519.
(See Arg. post, pp. 14 to 15.)

II.

The Legislature of a State has the right to enact statutes of limitation, and it is no objection to their validity that they are made to apply to existing rights, provided a reasonable time be given in future for complying with the statutes, and under repeated decisions of this court, the statute complained of is not unconstitutional.

Wheeler *v.* Jackson, 137 U. S., 245, 255.
Terry *v.* Anderson, 95 U. S., 628, 632.
Kashkonong *v.* Benton, 104 U. S., 668, 674.
Jackson *v.* Lamphier, 3 Peters, 280, 290.
Bronson *v.* Kinzie, 1 How, 311, 316.
Ross *v.* Duvall, 13 Peters, 45, 64.
Vance *v.* Vance, 108 U. S., 514.
(See Arg. post, pp. 15 to 20.)

III.

In Illinois, the title to land mortgaged is not out of the mortgagor, except as between him and mortgagee, and then only as an incident of the mortgage debt for the sole purpose of obtaining satisfaction; as to all other persons, and for all other purposes, the mortgagor is the legal owner of the mortgaged premises, and in the case at bar, the Supreme Court of Illinois merely adheres to the law of the State, as it always has existed therein.

Fitch *v.* Pinckard, 4 Scam. 69, 82, 83.
Ryan *v.* Dunlap, 17 Ill., 40.
Sargent *v.* Howe, 21 Ill., 149.
VanSant *v.* Allmon, 23 Ill., 30.
Hall *v.* Lance, 25 Ill., 250.
Harris *v.* Mills, 28 Ill., 44, 46.
Pollock *v.* Maison, 41 Ill., 516.

Emory *v.* Keigan, 88 Ill., 482.
Delano *v.* Bennett, 90 Ill., 533.
Barrett *v.* Hinckley, 124 Ill., 32.
Lightcap *v.* Bradley, 186 Ill., 518, 524.
Ware *v.* Schints, 190 Ill., 189.
Hughes *v.* Edwards, 9 Wheat, 497, 500.
Hutchinson *v.* King, 1 Wall, 53.

While the mortgage conveys to the mortgagee a legal title it is only a limited or qualified legal title, and neither before nor after condition broken does the mortgagee have the "absolute legal title" under the law of Illinois. On the contrary it is only a base or determinable fee. Independent of the debt, which the mortgage is given to secure, he has no title whatever. When the debt is paid, released, discharged or barred by the statute of limitations or in any way satisfied, the mortgagee's title is extinguished by operation of law.

Barrett *v.* Hinckley, 124 Ill., 32, 46, and cases cited therein.

Delano *v.* Bennett, 90 Ill., 533, 536.
Waughop *v.* Bartlett, 165 Ill., 124, 132.
Speer *v.* Hadduck, 31, Ill., 439, 443.
Bogardus *v.* Moses, 181 Ill., 554.
Lightcap *v.* Bradley, 186 Ill. 510, 518, 524.
Ware *v.* Schintz, 190 Ill., 189.

The title which the mortgagee gets by the mortgage can be used by him for one and only one purpose, viz.: as a means for the collection of the debt secured, or so much thereof as the mortgaged premises, when resorted to for that purpose, will satisfy. A valid foreclosure of the mortgage by a decree of a court of equity in a foreclosure suit, followed by a valid sale in pursuance of the decree, extinguishes the mortgage lien and satisfies the debt so far as the mortgage and land is concerned.

Smith *v.* Smith, 32 Ill., 198.
Siligman *v.* Laubheimer, 58 Ill., 124, 126.
Ogle *v.* Koerner, 140 Ill., 170, 179, 180.
Rains *v.* Mann, 68 Ill., 264.

Robins *v.* Swain, 68 Ill., 197.
Finley *v.* Thayer, 42, Ill., 350, 353.
Trustees of School *v.* Love, 34 Ill. App., 418, 419, 420.
People *v.* Beebe, 1 Barb. (N. Y.), 379, 388.

The land having been once applied by sale under a valid foreclosure toward satisfying the debt which was a charge upon it, could not again be sold or applied to the payment of the same charge.

State Bank *v.* Wilson, 4 Gilman, 57, 67.
Whiteneck *v.* Agritt, 56 Ill. App., 72.
Smith *v.* Smith, 32 Ill., 198.
Hughes *v.* Frisby, 81 Ill., 188.
Ogle *v.* Koerner, 140 Ill., 170, 180.
Smith *v.* Vandyke, 17 Wis., 214, 216.
Smith *v.* Luddington, 17 Wis., 344, 349.
Warrick *v.* Hull, 102 Ill., 280.

The authorities already cited shows that a mortgagee or *cestui que trust*, who becomes the purchaser at the foreclosure sale, thereafter sustains the same relation to the property that any stranger would sustain if such stranger had been purchaser. (See further on this):

Davis *v.* Dale, 150 Ill., 239, 243, 244.

After the sale the only parties who had any interest or right in or to the land sold were Prettyman as the grantee of the mortgagor, and Mrs. Bradley as the holder of the certificate of purchase. Prettyman could free his land from the lien of the certificate by redeeming as provided by the statute and the certificate gave Mrs. Bradley the right to receive the redemption money, if redemption was made, or, if redemption was not made, then a deed for the land by complying with the statute. And this leads us to the inquiry as to what a certificate of purchase is under the laws of Illinois.

(See Arg. post, pp. 20 to 27)

IV.

In Illinois, a certificate of purchase, is only a lien. No title passes to the holder of it, and there is none vested

in him until the deed is made. Until the deed is made, he is not even entitled to the possession of the premises.

Bennett *v.* Matson, 41 Ill., 332, 344.
O'Brien *v.* Fry, 82 Ill., 274, 277.
Rockwell *v.* Servant, 63 Ill., 425.
Vaughn *v.* Ely, 4 Barb., 159.
Evertson *v.* Sawyer, 2 Wend., 507.
Aldrich *v.* Sharp, 3 Scam, 261, 263.
Kelhotts *v.* Wolf, 8 Brad. (Ill. App.), 371.
Johnson et al. *v.* Baker, 38 Ill., 98, 102.
Hays *v.* Cassell, 70 Ill., 669, 672.
Stephens *v.* Ill. M. F. Ins. Co., 43 Ill., 327.
Lightcap *v.* Bradley, 186 Ill., 510.
Bowman *v.* The People, 82 Ill., 246.
Roberts *v.* Clelland, 82 Ill., 538, 542.
Smith *v.* Calvin, 17 Barb. (N. Y.), 161.
(See Arg. post, pp. 27 to 29.)

V.

The statute complained of, at most, only operated upon the remedy, and not even upon that until after all contract rights, obligations and duties given by, or growing out of the McCune trust deed had been enforced, and the trust deed itself extinguished by the foreclosure and sale. From and after the sale, all rights and interest of plaintiff in error in or to the land were measured by the certificate of purchase.

Davis *v.* Dale, 150 Ill., 239, 248, 244.
Ogle *v.* Koerner, 140 Ill., 170, 179, 180.
Seligman *v.* Lanbheimer, 58 Ill., 124.
Seeberger *v.* Weinberg, 151 Ill., 369, 380, 381.
Lightcap *v.* Bradley, 186 Ill., 510, 526.
Peterson *v.* Emmerson, 135 Ill., 55.
Ryhiner *v.* Frank, 105 Ill., 326.
Smith *v.* Smith, 32 Ill., 198.
Rains *v.* Mann, 68 Ill., 264.
Wyman *v.* Cochran, 35 Ill., 152.
Leslie *v.* Bontil, 130 Ill., 501.

A legislative act is not in conflict with the federal constitution, prohibiting the impairment of the obligation of a contract, unless it operates directly on the contract and impairs it.

Hanford *v.* Davies, 163 U. S., 273.
Turner *v.* Wilkes, 173 U. S., 461.
Central Land Co. *v.* Laidley, 159 U. S., 109.
VanHoffman *v.* City of Quincy, 4 Wall, 535.
(See Arg. post, pp. 24 to 35.)

VI.

The conclusions of the Supreme Court of Illinois as to the respective rights, title and interest of the mortgagor and mortgagee, the effect of the foreclosure proceedings, and the sale of the mortgaged premises by the master in chancery, the relation which the plaintiff in error sustained to the property, by bidding the same off at the sale, the rights or interest acquired by the certificate of purchase, the rights, title and estate still remaining in the mortgagor or his grantee, Prettyman, after the sale, the necessity of a deed, after redemption expired, in order to divest the title and estate of the mortgagor, or his grantee and vest the same in the holder of, the certificate, being predicated on the general local law of the State governing the same, are not reviewable by this court on a writ of error to the Supreme Court of the State.

New Orleans Water Co. *v.* Louisiana S. R. Co., 125 U. S., 18.
Central Land Co. *v.* Laidley, 159 U. S., 109.
Turner *v.* Wilkes County, 173 U. S., 461.
Abraham *v.* Casey, 179 U. S., 210.
Arndt *v.* Griggs, 134 U. S., 316.
See Arg. post pp. 35 to 39

VII.

A certificate of purchase is not even color of title, much less does it confer title.

Bride *v.* Watt, 23 Ill., 507, 511.
Rigor *v.* Frye, 62 Ill., 507.

Shackleford *v.* Bailey, 35 Ill., 387.
Perry *v.* Burton, 111 Ill., 138, 141.

The title which is required by Section 4 of Chap. 83 must be at least a *prima facie* good title either in law or equity, and must continue in the party setting up the bar, for seven years, as well as the possession for seven years.

Elston *v.* Kennicott, 46 Ill., 207, Opinion on rehearing.
Moore *v.* Brown, 52 U. S., (11 How), 414.
Skyle's Heirs *v.* King's Heirs 2, A. K. Marshall, 385.

The Supreme Court of Illinois has expressly decided that there is no title in the holder of the certificate of purchase either legal or equitable, and especially after the certificate is barred by the statute.

Ryhiner *v.* Frank, 105 Ill., 326, 330.
Peterson *v.* Emmerson, 135 Ill., 55, 60.
Seeberger *v.* Weinberg, 151 Ill., 368, 382.
Brown *v.* Ridenhower, 161 Ill., 239.
Lightcap *v.* Bradley, 186 Ill., 150, 515.
Bradley *v.* Lightcap, 201 Ill., 511, 519.
Bradley *v.* Lightcap, 202 Ill., 154.
Heacock *v.* Lubuke, 107 Ill., 396.
(See Arg. post, pp. 39 to 47)

VIII.

It is not only a statutory provision, but an elementary rule, strictly adhered to by this court, that the construction of State law upon questions affecting the title to real property by the highest court of the State where the land is located, is binding upon this court, and so also as to statutes of limitation.

Revised Statutes of U. S. Chap. 12, title 13, Sec. 721.
DeVaughn *v.* Hutchinson, 165 U. S., 566.
Clark *v.* Clark, 178 U. S., 186.
Brine *v.* Ins. Co., 96 U. S., 627.
Clark *v.* Graham, 6 Wheat, 577.

Abraham *v.* Casey, 179 U. S. 210.
Williams *v.* Kirtland, 13 Wall, 306.
Turner *v.* Wilkes, 173 U. S., 461, 464.
Arndt *v.* Griggs, 134 U. S., 316.
Forsyth *v.* Hammond, 166 U. S., 518.
Percy *v.* Cockrill (C. C. A.), 53 Fed., 872.
Brunswick *v.* Bank, 99 Fed., 635.
Morley *v.* Lake Shore Co., 146 U. S., 162.
Board *v.* Louisiana, 179 U. S., 622.
(See Arg. post., pp. 47 to 48.)

IX.

The decision of the Supreme Court of Illinois complained of, rests on independent grounds, not involving a federal question and broad enough to maintain its judgment, viz., the application of the doctrine of *res adjudicata*, and under repeated decisions of this court the writ of error should be dismissed, or the judgment affirmed without considering any other question.

California Powder Works *v.* Davis, 151 U. S., 389.
Hale *v.* Akers, 132 U. S. 554 and cases cited.
Murdock *v.* Memphis, 20 Wall, 590.
Jenkins *v.* Loewenthal, 110 U. S., 222.
Castillo *v.* McConnico, 168 U. S., 674.
Eustis *v.* Bolles, 150 U. S., 361.
(See Arg. post., pp. 48 to 52.)

X.

The statute complained of is not inconsistent with the Fourteenth Amendment of the United States Constitution, or Section 1979 of the Revised Statute.

Wheeler *v.* Jackson, 137 U. S., 245.
Terry *v.* Anderson, 95 U. S., 628.
Saranac L. Co. *v.* Roberts, 177 U. S., 318.
Hurtado *v.* California, 110 U. S., 516.
In re Brown, 135 U. S., 705, 707.

It is well settled by the decisions of this court that the Fourteenth Amendment was not designed to limit, and does not limit what is known as the police power of the States, a familiar instance of the exercise of which is the enactment of statutes of limitation, and there is no constitutional objection to their validity provided a reasonable time, taking into consideration the nature of the case, is allowed for bringing an action or performing an act after its passage and before the bar takes effect.

Cooley's Constitutional Limitation, p. 434 (6th ed.).
Wheeler *v.* Jackson, 137 U. S., 255.
Turner *v.* New York, 168, U. S., 90, 94.
Davidson *v.* New Orleans, 96 U. S., 97, 102.
L. & N. R. Co. *v.* Schmidt, 177 U. S., 230, 236.
Iowa Central R. Co. *v.* Iowa, 160 U. S., 389, 393.
Leeper *v.* Texas, 139 U. S., 462.
Missouri P. R. Co. *v.* Humes, 115 U. S., 512, 518.
Minneapolis R. Co. *v.* Beckwith, 129 U. S., 26, 29.
Caldwell *v.* Texas, 137 U. S., 692, 697.
Munn v. Illinois, 94 U. S., 113, 134.
Grozza *v.* Tiernan, 148 U. S., 657, 661.
Stearns *v.* Gettings, 23 Ills., 387.
Hurtado *v.* People, 110, U. S., 516.
(See Arg. post., pp. 52 to 59.)

XI.

The decision of the Supreme Court of Illinois, which this court is asked to review, proceeds not only upon the general jurisprudence of the State, but is also based upon rules of property, fully established in a series of adjudications by the highest court of the State, long acquiesced in by its citizens, and firmly implanted in its jurisprudence, as is well shown by the decisions of the State Supreme Court hereinbefore cited. And under repeated decisions, this court will apply the rules adopted in the State to the determination of the controversy.

Suydam *v.* Williams, 24 How., 427.
Chicago vs. Robbins, 2 Black, 418.
Gage *v.* Company, 115 U. S., 454.
Burgess *v.* Seligman, 107 U. S. 20.
Lane *v.* Vick, 3 How., 464.
Greene *v.* Lessee of Neal, 6., 291.
(See Arg. post., pp. 59 to 62.)

ARGUMENT.

I.

Following the order of our brief, we respectfully ask the attention of the court to a few suggestions on the law and its application.

Under the laws of Illinois (Starr and Curtis Annotated Statutes of Illinois, Chap. 77, Sec. 16), when real estate is sold by virtue of an execution, judgment or decree of foreclosure of mortgage, etc., it is the duty of the sheriff, master in chancery or other officer making the sale, to issue to the purchaser, a certificate commonly spoken of as a certificate of purchase, describing the premises purchased, the amount paid or bid for the same, and the time when the purchaser will be entitled to a deed, unless the premises shall be redeemed. The judgment debtor or mortgagor has 12 months in which to redeem (same statutes, Sec. 18) and any decree or judgment creditors of the debtor or mortgagor may redeem after the expiration of 12 months and before the expiration of 15 months from the day of sale (same statutes, Sec. 20). If there be no redemption within 15 months, the holder of the certificate of purchase is entitled to a deed, conveying to him the premises sold, upon complying with Sec. 30 of Chap. 77 of the Statute of Illinois, and it is this section of the statute which plaintiff in error complains of. It reads as follows:

"When the premises mentioned in any such certificate "shall not be redeemed in pursuance of law, the legal "holder of such certificate shall be entitled to a deed "therefor at any time within five years from the expi-

"ration of the time of redemption. The deed shall be "executed by the sheriff, master in chancery or other "officer who made such sale, or by his successor in office, "or by some person specially appointed by the court "for the purpose. If the time of redemption shall have "elapsed before the taking effect of this Act, a deed "may be given within five years from the time this Act "shall take effect. When such deed is not taken within "the time limited by this Act, the certificate of pur"chase shall be null and void; but if such deed is wrong"fully withheld by the officer whose duty it is to exe"cute the same, or if the execution of such deed is re"strained by injunction or order of a Court or judge, the "time during which the deed is so withheld or the exe"cution thereof restrained, shall not be taken as any "part of the five years within which said holder shall "take a deed." Starr & Curtis' Illinois Statute, Vol. 2, Chap. 77, Sec. 30.

This act complained of was passed March 22, 1872, and went into effect July 1, 1872. That this is a limitation statute is apparant upon its face, and no judicial determination was necessary to make it such. The language used by the General Assembly is clear, ample and sufficient for that purpose. However, to forever settle any question about it, we have the decisions of the Supreme Court of Illinois in a number of cases in which the court holds that the statute is one of limitation and affects only the remedy. Ryhiner *v.* Frank, 105, 111, 350. (See also case cited in brief under point I.) Leaving for the present the question as to how far this court is bound by the decisions of the Supreme Court of Illinois, in the construction of this statute, let us in the next place see what extent the legislature has the right to pass limitation statutes.

II.

If we are able to understand adjudicated cases, it is a settled principle of law that statutes of limitations fixing the time within which an action may be brought

or a particular thing done, as the taking out of a deed on a certificate of purchase, are regulations affecting the remedy that are clearly within the sphere of State legislation. That the parties to a contract have no more vested right or interest in a particular limitation which has been fixed, than they have in an unrestricted right to sue. On the contrary, the legislature may provide a limitation where none existed before, as well as shorten the time within which suit to enforce existing action may be commenced, or act performed, provided a reasonable time, taking all the circumstances into consideration, be given by the legislative act prescribing the limitation for the commencement of the action, or the performance of the act, before the bar takes effect.

Let us briefly examine some of the cases cited.

Terry *v.* Anderson, 95 U. S., 628, was a case where the cause of action on the obligations had been running nearly four years, and under the law as it then existed, the creditor had 20 years in which to bring suit. Subsequently, the legislature of Georgia passed an act limiting the period in which suit on such past due obligation should be brought by January 1, 1870, which gave the creditor only 9 months and 17 days in which to bring his action. It was insisted that the act was unconstitutional, because it impaired the obligation, and the agreement was made in that case along the same line as the case at bar, that as the statute of limitation in force when the liability of the defendant was incurred did not bar the action until the expiration of 20 years from the time the action accrued, a statute passed subsequently reducing the limitation was such an impairment of the contract as to render the statute void. This court however held the act valid. Chief Justice Waite in delivering the opinion of this court said (p. 633-4): "This court has often "decided that statutes of limitation affecting existing "rights are not unconstitutional if a reasonable time "is given for the commencement of an action before "the bar takes effect." (Citing Hawkins *v.* Barney, 5

Peters, 451. Jackson *v.* Lamphier, 3 Peters, 280. Sohn *v.* Waterson, 17 Wall, 596. Christian *v.* Russell, 5 Wall, 290. Sturges *v.* Crowninshield, 4 Wheat, 122.) "It is "difficult to see why if the legislature may prescribe a "limitation where *none* existed before, it may not "change one which has already been established. The "parties to a contract have no more *vested* interest in "a particular limitation which has been fixed than "they have in an unrestricted right to sue. They have "no more a vested interest in the time for the com- "mencement of an action than they have in the form "of the action to be commenced, and as to the form "of action, or mode of remedy it is well settled that "the legislature may change them at discretion, provid-ed "~~ing~~ adequate means of enforcing the right remains. "In all cases, the question is one of reasonableness, "of that the legislature is primarily the judge, and we "can not overrule the decision of that department of "the government unless a *palpable* error has been com- "mitted."

The case of Koskhonong *v.* Burton, 104 U. S., 668-674, is if anything, a still stronger case in support of our position.

In Jackson *v.* Lamphier, 3 Peters, 281, 289-290, this court said: "It is within the undoubted power of the "State legislature to pass recording acts, by which the "elder grantee shall be postponed to a younger if the "prior deed is not recorded within the limited time, "and the power is the same whether the deed is dated "*before* or after the passage of the recording act. "Though the effect of such law is to render the prior "deed *fraudulent* and *void* as to subsequent purchasers, "it is not a law impairing the obligation of contract, "such too, is the power to pass acts of limitation and "*their effect.*"

Vance *v.* Vance 108 U. S., 514, was a case where the Civil Code of Louisiana, provided in respect to tutors of minors, as follows: "The property of the tutor is "tacitly mortgaged in favor of the minor from the day "of his appointment as tutor, as security for his admin-

"istration and for the responsibility which results from "it." There was a tacit mortgage under this law which had been in full force and virtue from October 15, 1859. In 1868, the State adopted a new constitution in which it provided "that no mortgage or privilege shall here- "after affect third parties unless recorded in the parish "where the property to be affected is situated. The "tacit mortgages and privileges now existing in the "State shall cease to have effect against third persons "after 1st of January, 1870, unless duly recorded. The "General Assembly shall provide by law for the regis- "tration of all mortgages and privileges."

This, the legislature proceeded to do on the 8th day of March, 1869. This court in the foregoing case, upheld the validity of that clause of the State Constitution, and in doing so said (p. 517): "It is in the nature "of a statute of limitation, the right to prescribe the "time within which existing rights shall be prosecuted, "and means by and conditions on which they may be "*continued in force* is, we think, undoubted. Otherwise, "when no term of prescription exists at the inception "of a contract, it would continue in perpetuity, and all "laws fixing a limitation would be abortive. Now, "it is elementary, that a State may establish, alter, "lengthen or shorten the period of prescription of exist- "ing rights; provided that a reasonable time be given "in future for complying with the statute."

While upon this branch of the case, we desire to call the court's attention to one other case cited in our brief. It is the case of Wheeler *v.* Jackson, 137 U. S., 245.

In the charter of the city of Brooklyn, passed in 1854, there was a provision for the collection of taxes and assessments which in substance, provided that the collector should sell property against which taxes and assessments remained unpaid, for the lowest term of years for which any person would purchase it, and that the purchaser should receive a certificate of sale, which, when recorded in the Recorder's office should constitute a lien on the premises sold, that the owner

of the premises might redeem within two years by paying the purchase money and any other taxes paid by the purchaser and 15 per cent. in addition. In case the land was not redeemed within the specified time, the collector should execute to the purchaser a proper conveyance of the land sold, and thereupon the purchaser might obtain possession by summary procedings. In 1885 an act was passed by the legislature providing that no special proceedings should be maintained to compel the execution of the conveyance by the collector upon any sale for taxes made more than eight years prior to its passage unless brought within six months thereafter, and that after the lapse of six months, all sales made more than eight years prior to the passage of the act *should be cancelled and the lien of the certificate of sale should cease.* Wheeler held a number of certificates which were obtained on sales made more than eight years prior to the Act of 1885. He did not apply for any conveyance until after the six months provided in the act had elapsed. Subsequent to the expiration of the six months, he applied for his lease or deed which was refused, on the ground that he had lost his rights which his certificates gave at the expiration of six months from the time the Act of 1885 went into effect, although but for that act his lien would have been perfectly good and he would be entitled to his lease or conveyance, he brought suit in the State court to compel the execution of leases on his certificates, was defeated, and the case was finally brought before this court, and the court held the Act of 1885 was not unconstitutional, as impairing the obligation of contracts, because it prescribed a shorter period within which actions might be brought, also that it was not unconstitutional under the Fourteenth Amendment because it provided for the cancellation of the lien of the certificate of sale, in case proceedings to compel the execution of leases were not commenced within six months after its passage, since the substantial acquisition of the purchase was a right to a

conveyance or lease after the period of redemption, and not a right to a permanent lien, irrespective of reasonable limitations prescribed by the legislature.

It appears to us that the holder of the certificate of sale, in the foregoing case of Wheeler *v.* Jackson presented to this court a much stronger case for the interposition of this court on the ground that the act was unconstitutional, than is presented by the plaintiff in error in the case at bar.

In Wheeler *v.* Jackson, the certificates were in the hands of the purchaser in full force and effect with the right to delay taking out the conveyance unaffected by any statute when the legislature passed the Limitation Act of 1885. In the case at bar, the statute complained of had been in full force and effect for more than seven years before the certificate of purchase came into existence. But in either case, the doctrine is sound, so long as a reasonable time is given to comply with the statute.

III.

The plaintiff in error attacks the validity of the statute referred to, not alone on the ground that it is in and of itself unconstitutional, but that it is rendered unconstitutional by the construction which the court gave it, and that the court itself has changed its holdings and the law relating to mortgages and their argument was, and still is, based on the assumption that there was an estate and title in the mortgagee which existed, independent of the mortgage debt; that after condition broken (to use their own language taken from their brief in the State Supreme Court), "the "mortgagee was the real owner as against all the "world;" that he could do what he saw fit with the mortgaged property, subject only to an equity of redemption in the mortgagor which was only an equitable right, recognized only by courts of equity," and "that after a foreclosure, or an effort to foreclose the "mortgage, followed by possession, the mortgagee held

"under claim and color of title, and unless redemption "was made in pursuance of the decree or the statute, "he, the mortgagee, thereafter was the sole owner of "both the legal title and the equity of redmption." And that the Supreme Court in Lightcap *v.* Bradley, 186 Ill., 510, which was the first time the case at bar was before the Supreme Court changed the law in this regard. In this court they modified it somewhat, they now say "after condition broken the title becomes absolute in the mortagee."

By a careful study of the opinion referred to in Lightcap *v.* Bradley, 186 Ill., 510, as well as in the opinion now before this court, we fail to find, and we believe this court will fail to find, any new principles of law or any departure from old well-settled principles as to the title, rights and interests which the mortgagor and mortgagee respectively hold and ever have held in the mortgaged property in the State of Illinois. Instead of the mortgagee, either before or after condition broken "being the real owner of the "land as against all the world," or the title becoming "absolute in the mortgagee" the law is and ever has been just the contrary. "The title is never out of the "mortgagor, except as between him and the mortgagee "and as an incident of the mortgage debt, for the pur-"pose of obtaining satisfaction." As to all other persons and for all other purposes, the mortgagor is the legal owner and holder of the mortgaged estate.

That the Supreme Court of Illinois, both times that this case was before it (the first time as Lightcap *v.* Bradley, 186 Ill., 510, and the last time as Bradley *v.* Lightcap, 201, Ill., 511) made no departure from the law of Illinois as it existed before, at the time, and ever since the McCune trust deed came into existence, but on the contrary adhered strictly to the principles laid down in a long line of decisions of that court, we invite this court's attention to the authorities cited under division III. of our brief. We will briefly review some of them.

The case of Fitch *v.* Pinckard, 4 Scam, 69, decided at

the December term, 1842, was an ejectment suit in which the question as to whether the mortgagee or mortgagor was to be regarded as the real owner of the land was before the Supreme Court and the Supreme Court held that although the earliest doctrine in England was that the whole legal estate was in the mortgagee, and that courts of law were not inclined to notice the interest of the mortgagor, still that was not the law of Illinois, that the strictness of the English law had yielded to the principles of justice so as to carry into effect the true intent of the parties, and that as the law of Illinois then stood (1842) to use the language of the court: "The mortgagor is now regarded "as the real owner of the land for all beneficial pur- "poses subject to the charge of the repayment of the "money."

The case of Sargent *v.* Howe, 21 Ill., 148, decided January term, 1859, was a chancery proceeding growing out of the transfer of notes secured by a mortgage, and one of the questions before the court was whether the debt or the mortgage was the principal thing, and the court held that it was a well established doctrine that the debt was the principal thing and the mortgage a mere incident, and that a satisfaction of the debt released the mortgage.

Vansant *v.* Allmon, 23 Ill. 30, decided at the November term, 1859, was a chancery proceeding in which Justice Breese in delivering the opinions, said: "It is "a well settled and familiar principle that the debt "is the principal thing and the mortgage only an inci- "dent—mere security for the payment of the debt."

Hall *v.* Lance, 25 Ill., 277, decided at the January term, 1861, was an ejectment suit and under the law of Illinois the defendant in an ejectment suit could then, and still can, defeat a recovery by showing, an outstanding title, but the court decided that a mortgage, even after condition broken, was not an absolute outstanding title of which a stranger can take advantage to defeat recovery in ejectment.

Harris *v.* Mills, 28 Ill., 44, decided at the April term,

1862, arose on a bill to foreclose a mortgage, the statute of limitation having barred a recovery by suit on the note, but there being no express statute barring a foreclosure proceeding, the question was presented as to whether or not an action on the note being barred by the statute, it formed a bar to the foreclosure of the mortgage by bill, and the court held that it did; that the debt was the principal thing, and the mortgage a mere incident, and that the bar which the statute interposed against the principal thing, the debt, was a bar to the incident, the mortgage.

Pollock *v.* Maison, 41 Ill., 516, decided at the April term, 1866, was an ejectment suit in which the mortgagee sought to recover possession of the premises against the widow and heirs of the mortgagor who defended on the ground that the notes, to secure which the mortgage was given, were barred by the statute of limitation, claiming that as the notes were barred, a recovery under the mortgage was also barred. The defense was sustained by the Supreme Court, the court holding that although the mortgagee may make entry after condition broken, and may maintain ejectment, as one of the modes of foreclosing or obtaining satisfaction, yet the debt was the principal thing, and when that was gone, the incident, the mortgage, was gone also, and that a foreclosure in any mode can not then be had either by ejectment, *saire facias*, bill in equity, or otherwise.

Emory *v.* Keighan, 88 Ill., 482, was also an ejectment suit, held the same doctrine, and further said the "existence of the debt to secure which a mortgage is given, is essential to the life of a mortgage, and when the debt is paid, discharged, released or barred by the statute of limitation, or by a judgment of a court, the mortgage is gone and has effect no longer."

Cottingham *v.* Springer, 88 Ill., 90, decided January term, 1878, was an ejectment suit in which the Supreme Court reviews some of the innovations and modifications which many of the States, and especially Illinois, had made to the strictness of the common law,

and holds the law of Illinois to be that the mortgagor, for all beneficial purposes, is the real owner of the land mortgaged, subject only, to the payment of the money.

Delano *v.* Bennett, 90 Ill., 533, was an ejectment suit decided September term, 1878. The court held that a mortgage is a mere incident to the mortgage debt, and that a conveyance of the interest of the mortgagee in the land without an assignment of the debt, is considered in law a nullity.

Barrett *v.* Hinckley, 124 Ill., 32, was an ejectment suit, decided at the January term, 1888. The Supreme Court, in a very able and extended opinion by Justice Mulkey, reviewed the law concerning mortgages, and the rights, title and estate of the mortgagee and mortgagor in the mortgaged premises, and after reviewing the early English law and the dual system which had grown up between equity and law respecting mortgages, proceeds to state the law of Illionis in these words, 124 Ill., 46: "It must not be concluded from "what we have said that the dual system respecting "mortgages as above explained, exists in this State, "precisely as it did in England prior to its adoption in "this country, for such is not the case. It is a conceded "fact that the equitable theory of a mortgage has, in "process of time, made in this State, as in others, mate-"rial encroachments upon the legal theory which is "now fully recognized in courts of law. That it is now "the settled law that the mortgagor or his assignee is "the legal owner of the mortgaged estate as against "all persons except the mortgagee or his assignee, "(citing Hall *v.* Lance, 25 Ill., 277; Emory *v.* Keighan, "88 Ill., 482). As a result of this doctrine, it follows "that in ejectment by the mortgagor against a third "party, the defendant can not defeat the action by "showing an outstanding title in the mortgagee. (Hall "*v.* Lance), so, too, courts of law now regard the title "of a mortgagee in the nature of a base or determinable "fee. The term of its existence is measured by that of "the mortgage debt. When the latter is paid off, or "becomes barred by the statute of limitations, the

"mortgagee's title is extinguished by operation of law "(citing Pallock *v.* Maison, 41 Ill., 516; Harris *v.* Mills, "28 id. 44; Gibson *v.* Rees, 50 id. 383). Hence the rule "is as well established at law as it is in equity, that the "debt is the principal thing, and the mortgage an inci- "dent."

We will not take up the time of the court by going through with all the cases cited in our brief, but will ask the court, if more be desired to examine Lightcap *v.* Bradley, 186 Ill., 510 and Ware *v.* Schints, 190 Ill., 189. Even this honorable court, as far back as 1824 in Hughes *v.* Edwards, 9 Wheat, 497-500, in determining whether the mortgagee or mortgagor was the real owner of the premises mortgaged, held that the mortgagor was in reality the owner of the land, subject only to the lien. "So much the owner," says the court, "that he is not accountable for the rents and profits "received by him during the continuance of his pos- "session even although the land, when sold, should be "insufficient to pay the debt."

And in Hutchison *v.* King, 1 Wall, 53, in determining the rights, title, interest and estate which the mortgagor and mortgagee respectively held in and to the mortgaged premises, this honorable court speaking through Mr. Justice Field said: "A mortgage is in *form* a conveyance vesting in the mortgagee upon its execution a conditional estate which becomes absolute upon breach of condition. At law it was *originally* held to carry with it all the rights and incidents of ownership, the right of the mortgagee to be treated as owner of the mortgaged premises could only be defeated upon the performance of the condition annexed by the day designated. Subsequent performance only gave a right to the mortgagor to resort to a court of equity for relief from forfeiture arising upon breach of condition. Such is the law at this day in some of the States of the Union. But in a majority of the States the law in this respect has been greatly modified by consideration drawn from the object and intention of the parties in executing and receiving instruments of this character. The doctrine established

by courts of equity, looking through the form, to the real character of the transaction, that a mortgage is a mere security for a debt and creates only a lien or incumbrance, and that the equity of redemption is the real and beneficial estate in the land, and may be sold and conveyed in any of the ordinary modes of transfer subject only to the lien of the mortgage has to a great extent by 'a judicial and almost insensible progress,' as Kent observes, been adopted by courts of law. To such a degree has this equitable view prevailed that the interest of the mortgagee is now generally treated by courts of law as real estate only so far as it may be necessary for the protection of the mortgagee and to give him the full benefit of his security. Although in the absence of stipulation as to the possession, he may enter upon the premises, his interest is widely different from that of owner. He can not, by conveyance, transfer any interest in the premises without a transfer of the debt secured. His interest is not subject to attachment or seizure on execution, he can not remove the buildings on the premises, nor the fixtures attached, nor can he subject the premises to any use but such as may furnish the means for the payment of the debt secured without impairing the value of the estate."

The title, interest or estate which the mortgagee holds under the mortgage, lacks every element incident to the title, interest and estate of the "real" or "absolute" owner; while that of the mortgagor both before and after condition broken has atttached to it every incident of absolute ownership.

Let us see. In Illinois the wife of the mortgagee neither has dower nor an incohate right of dower in the mortgaged premises. The land can not be sold on execution for his debt. He is not a freeholder by virtue of the mortgage. On his death, the land does not descend to his heirs. On his death, the mortgage passes to his personal representatives. He can not pass the land by devise. It passes to his personal representatives as personal estate. On his death, a suit to foreclose the mortgage must be brought by his personal representa-

tives, and his heirs are not necessary or proper parties thereto. On the other hand, the wife of the mortgagor is entitled to dower. It may be sold on execution to satisfy a judgment against him. He is a freeholder. He may convey it by deed to a third person. It passes as real estate by his devise. It descends to his heirs. In short, the mortgagor can do anything and everything with his estate in the mortgaged premises, subject only to the lien of the mortgage, which he might or could do if there was no mortgage, and his estate is also, with that exception, subject to the same incidents, while the mortgagee can do nothing with his interest in the mortgaged premises, except in furtherance of the payment of the mortgage indebtedness. Independent of the debt, he has no estate, claim, title or interest in the premises whatever.

IV.

It is a well settled principal of the law of Illinois that a certificate of purchase is only a lien, that no title vests in the holder thereof, until he acquires the sheriff's or master's deed, and that the title of a judgment debtor or of a mortgagor is not divested until the deed is executed. This question has been passed upon by the Supreme Court of Illinois in a number of cases, many of them long before the McCune trust deed was even thought of, among which is Johnson *v.* Baker, 38 Ill., 98, decided at the April term, 1865, in which the court held that until the holder of the certificate of purchase acquires the Sheriff's deed after redemption expires, he is only regarded as a bidder. So in Stephens *v.* Illinois M. F. Ins. Co., 43 Ill., 327, decided January term, 1867.

The Supreme Court states the law to be that the purchaser under a Master's sale on foreclosure of a mortgage acquires no title until the deed is made. That while the deed will relate back to the beginning of the lien in order to cut off intervening incumbrances, yet it will not carry back the absolute divestiture of title, and that until the deed is made the mortgagor still has

the estate of a mortgagor with the qualification that the amount and time of redemption has been absolutely fixed by the decree and sale.

In the case of Bennett *v.* Matson, 41 Ill., ~~328~~ 332, April term, 1866, the court holds that a purchaser at a judicial sale is not entitled to possession before the deed is executed, that until he obtains his deed he is for most purposes a stranger to the possession.

These cases are followed by Rockwell *v.* Servant, 63 Ill., 424, decided at the January term, 1872, declaring the same principal, and at the September term, 1873, in Hays *v.* Cassell, 70 Ill., 669, 672, the court recites the law in these words: "The certificate of purchase con-"veyed no title to the purchaser, nor did it disturb the "possession of the defendant. That title continued in "him, and would remain until fifteen months had elapsed "*and his title transferred by the sheriff's deed.*" So in O'Brien *v.* Fay, 82 Ill., 277, the court says: "By our law the defendant is entitled to the possession between the day of sale and the making of the master's deed." In the case of Lightcap *v.* Bradley, 186 Ill., 510, the cases are carefully reviewed by the court, and the court there finds the law of Illinois to be as we have stated. How could it be otherwise, there is no provision in the statute or law of Illinois that a certificate of purchase shall transfer title, nor does the certificate itself purport to pass any title either in fee, remainder, reversion, a term of years, or any other estate. On the contrary, it negatives the very idea of a transfer of title by telling the holder of it when he will be entitled to a deed if the property be not redeemed. The certificate only purports to give the legal holder of it a right to have the title transferred to him by deed at the expiration of the period of redemption if the property be not redeemed. At the expiration of fifteen months, when redemption expires, the holder of a certificate has the right to demand a deed at any time within the statutory limitation of five years, which deed, when executed will transfer the title which the mortgagor had at the time the mortgage was executed, to the recipient of the deed, but the

holder of the certificate is never vested with title, and the title of the mortgagor is never actually divested until the master's deed is executed, and the holder of the certificate can not be compelled to take the deed if he does not want it.

V.

It can not be reasonably contended that the statute complained of directly affected the contract evidenced by the notes to Mrs. Bradley and the trust deed to Johnson securing the same. Yet that is what it must do to be obnoxious to section 10 of act 1 of the constitution. In Van Hoffman *v.* City of Quincy, 4 Wall, 535, this court in deciding the character of legislation which would be in violation of section 10, laid down this rule: "That the legislation complained of must "affect the contract directly and not incidentally or by "consequence; that it is competent for the statute to "change the remedy or to modify it otherwise as the "legislature see fit, provided no substantial right "secured by the contract be thereby impaired."

The obligation of a contract is one thing, and the remedy to enforce it, another and distinct thing. The one arises when the contract is made, the other on a failure to perform. The one is that which obliges the parties to do or not to do, the other is the legal means to carry it into effect.

Now the statute complained of in no way affected or impaired the contract between Mrs. Bradley and McCune or Johnson as trustee.

At the time the statute was passed and went into effect, the notes and trust deed were in full force and effect. The statute had been in force for over seven years before she obtained her decree of foreclosure. The statute went into effect July 1, 1872, and the decree was rendered August 22, 1879, during all of which time the rights and obligations of the parties under the contract remained the same, even to the extent of the different remedies which she might pur-

sue, to enforce the obligation and obtain satisfaction of the debt. She had several remedies which she might have pursued all this time, for instance, sale of the land under the power given in the trust deed; personal judgment against McCune; ejectment and possession of the land, so as to apply the rents and profits to the satisfaction of the debt; strict foreclosure, from which there would have been no redemption; or by simple foreclosure and sale, which last she did pursue, and it was only upon the last remedy that the statute operated, and not even upon that remedy, viz.: foreclosure and sale, until redemption expired and she was entitled to a deed which was on the 27th day of January, 1881. Then it was for the first time that the statute came into operation so far as the land or the parties or any contract was concerned.

But upon what did it operate? What did it affect? It is not until after she is entitled to a deed on the certificate of purchase the statute has anything to operate upon. It then says to her, you may take out a deed on your certificate of purchase at any time within the next five years, but if you fail to do so within the five years, your certificate shall be null and void. Remember, that before the statute had any person or thing to affect or operate upon, there had to be and there was a valid foreclosure, sale, and redemption had expired. By the foreclosure and sale the trust deed had expended its force and become functus officio. All contract obligations growing out of the trust deed had been fixed and determined by the court, and the trust deed itself merged or extinguished by the decree, and from the date of the sale, Mrs. Bradley's rights and interest in the land were measured by the certificate of purchase which she, through the aid of the court, invoked by her and Johnson, the trustee had called into existence. When she became the purchaser at the master's sale, she assumed a new relation to the property, in no wise dependent on privity of contract. She then stood in the same situation to the property as any stranger would have stood who might have purchased

at the sale. That we are correct in what we have said, we desire to call the court's attention to the decisions of the Supreme Court of Illinois in the cases cited in the V division of our brief. We will not take up the time of the court in reviewing all of them, but trust that this honorable court, if it has any doubt as to the effect of the foreclosure and sale upon the contract, rights and obligations growing out of the trust deed, and the relation which the plaintiff in error sustained to the property from and after the sale under the decree of foreclosure, will examine each and every case for itself.

In Smith *v.* Smith, 32 Ill., 198, the Supreme Court of Illinois, at its April term, 1863, held that where a mortgage or trust deed was given to secure several notes, due at different times, with authority to make sale of the premises upon the non-payment at maturity of any of the notes for the satisfaction of such of them as should then be due, if the mortgagee resorts to equity to foreclose, he could only obtain foreclosure for such of the notes as were then due, and a foreclosure in such case, for the part of the debts which was due, would extinguish the mortgage lien, and would of necessity be a release of the security for the amount not due.

In Seligman *v.* Laubheimer, 58 Ill., 124, decided at the January term, 1871, the court held that where there was a decree of foreclosure of a mortgage followed by a sale of the premises, and a certificate of purchase issued to the mortgagee, who became the purchaser at the master's sale, the mortgage lien was extinguished, although the mortgaged premises were bid off for only a small part of the amount found due the mortgagee by the decree.

To the same effect is the case of Rains *v.* Mann, 68 Ill., 264, decided at the June term, 1873. The rights of a mortagee, the effect of the foreclosure of a mortgage or trust deed in the nature of a mortgage and sale under the decree, and the relation which the mortgagee, who bid the property in at the sale, sustained to the property, etc., after the sale, was very fully passed upon by

the Supreme Court of Illinois in Ogle *v.* Koerner, 140 Ill., 170. We quote from the opinion, p. 179, 180: "A "mortgage, or in this case, a deed of trust, in the nature "of a mortgage, vests in the party secured a lien upon "the mortgaged premises. By virtue of that lien the "mortgagee is entitled to have the mortgaged prop-"erty sold under decree of foreclosure and the proceeds "of the sale applied to the payment of the debt secured. "This is the mode, provided by law, for the enforce-"ment of the lien, and when the lien has been once "enforced by sale of the property, it has as to such "property, expended its force and accomplished its "purpose, and the property is no longer subject to it." The court further holds that the amount bid, is the full equivalent for the satisfaction of the lien, notwithstanding it is only a part of the amount found due, and that the purchaser, although he is the mortgagee by the sale, becomes an entire stranger to the property.

In Davis *v.* Dale, 150 Ill., 239, 248, the Supreme Court in reviewing the law of Illinois relating to foreclosures, the effect, a foreclosure and sale had upon the mortgage lien, and the relation the purchaser at the foreclosure sale sustains, said: "By virtue of the lien "created, the mortgagee or cestui que trust had the "right to have the security foreclosed and the property "sold and the proceeds applied in payment of the "secured debt. But when this has been done and the "lien enforced by a sale of the property and the pro-"ceeds applied, the mortgage or trust deed has "expended its force and the property is no longer sub-"ject to its provisions. (Citing Ogle, et al. *v.* Koenner "et al., 140 Ill., 170; Seligman *v.* Laubheimer, 58 id., "124.) Nor does it in any way affect the result that "the holder of the secured indebtedness becomes the "purchaser at the sale, whether he be the mortgagee "or cestui que trust, or not. By becoming the pur-"chaser, a new relation created by the statute exists, "in no wise dependent upon any privity of contract "between the purchaser and mortgagor."

We desire to call the court's special attention to

Seeberger *v.* Weinberg, 151 Ill., 369, 380, 381, and Lightcap v. Bradley, 186 Ill., 510, 532 to 536, in which the law upon this branch of the case is carefully reviewed, and fully sustains our position. Furthermore, it is adhered to by the court, as the settled law of the State long before the date of the McCune trust deed.

When the decree is rendered, and sale made, how can it be otherwise than that the mortgage becomes functus officio, and all contract obligations terminate?

The purchaser get not the mortgage nor the debt; on the contrary, the money which is paid, if the purchaser be a third party, or if the purchaser be the mortgagee, or the creditor whose debt is secured, then the bid, wipes out and extinguishes the mortgage debt so far as the mortgaged property is concerned. Let us illustrate this hypothetically.

Suppose when the master in chancery exposed this land for sale, under the decree, John Smith, a stranger to everything connected with the contract or suit, had bid $10,000 instead of Mrs. Bradley and had paid the money into the hands of the master, received the certificate of purchase, and the sale had been approved. Is there any possible doubt but that the debt would have been paid so far as the land was concerned? Suppose further, Mrs. Bradley did not call upon the master for the money, and in the course of time, the mastered squandered it, and his bondsmen were worthless, and thereby Mrs. Bradley lost the money. Could she again set up any valid claim to the land? The debt was paid so far as the mortgage lien was concerned, when the supposed Smith paid the money into the hands of the master. It was no business of the purchaser, or the debtor to see that the master paid it over to Mrs. Bradley, and from the Illinois authorities cited under divisions III, IV and V of our brief, the court will find the law of Illinois is now and ever has been, that the payment of a debt extinguishes the mortgage, also that when land is sold under foreclosure, whether it sells for the full amount of the debt, or only a portion of it, the mortgage is extin-

guished, and the land can not again be resorted to for any deficiency. We submit there can be but one answer to the question, viz.: she would have no further claim upon the land and must stand the loss. But what does John Smith, the purchaser get? He certainly does not get the debt, because that is paid, and he does not get the mortgage, because that is extinguished, and the only answer is, he gets a certificate of purchase which the statute of the State gives him through the master in chancery which certificate, if redemption be not made, and he complies with the requirements of the statute in relation thereto, will entitle him to a deed which will vest in him the title to the land; but he has no title under the certificate and none vests in him until the deed is made. (See authorities Illinois cases, Brief III, IV and V. The relation which he would sustain to the mortgagor and the land does not depend on any contract, but arises out of the statute. The statute of the State tells him what he shall get, how he shall get it, what he must do to get it, and what will be the effect if he fails to observe the statute in reference to the same. And when Mrs. Bradley became the purchaser at the sale, she thereafter occupied the same relation, to Prettyman, the grantee of the mortgagor and the land, that the supposed John Smith, or any stranger would, had they been the purchaser. Such has been the constant holding of the Supreme Court of the State, as that court says: "She could have no other or different right "under her purchase than any other purchaser. If "some other person had purchased the premises, no one "would say that such purchase acquired any right "except under the certificate of purchase, and it can "not be that the mortgagee has any other or different "or better title than any other purchaser. It would "be destructive to the fairness and "equality of such "sales that the mortgagee should acquire a better title "or should have any advantage as bidder over any "other person."

VI.

When this case is carefully examined, it will be found the grounds relied upon for invoking the jurisdiction of this court are substantially that the Supreme Court of Illinois misconstrued or wrongly interpreted the general local law of the State relating to mortgages, their foreclosures, its effect, the relation and rights which the holder of a certificate of purchase and the mortgagor respectively hold and sustain to the property and to each other, after the sale by the master, and also that a wrong construction and application of the statute complained of was made by the court.

The case is quite like the case of Central Land Company of West Virginia *v.* Laidley, 159 U. S., 109, in which this court, speaking through Mr. Justice Gray, said: "In order to come within the provision of the "Constitution of the United States which declares that "no State shall pass any law impairing the obligation "of contracts, not only must the obligation of a contract "have been impaired, but it must have been impaired by "some act of the legislative ~~from or~~ of the State, and not "by a decision of its judicial department only. * * * "As was said by this court, speaking by Mr. Justice "Grier in such a case as long ago as 1847: 'It is the "peculiar province and privilege of the State courts to "construe their own statutes; and it is no part of the "function of this court to ~~reverse~~ their decisions, or as-"sume jurisdiction over them on the pretense that their "judgments have impaired the obligations of contracts. "The power delegated to us is for the restraint of uncon-"stitutional legislation by the State, and not for the cor-"rection of alleged errors committed by the judiciary.' "* * * It is said by Mr. Justice Miller, in deliver-"ing a late judgment of this court: 'We are not au-"thorized by the judiciary act to review the judgments "of State courts, because their judgments refuse to give "effect to valid contracts, or because those judgments, "in their effect, impair the obligation of contracts. If "we did, every case decided in a State court could be

"brought here, where the party setting up a contract, "alleged that the court had taken a different view of "its obligation to that which we held.' Knox *v.* Bank, "12 Wall, 379, 383. The same doctrine was stated by "Mr. Justice Harlan, speaking for this court as follows: " 'The State court may erroneously determine questions "arising under a contract which constitute the basis of "the suit before it; it may hold a contract void which, "in our opinion, is valid, or its interpretation of the con- "tract, may in our opinion, be radically wrong; but in "neither of such cases, would the judgment be reversi- "ble in this court under the clause of the Constitution "protecting the obligation of contracts against impair- "ment by State legislation, and under the existing "statutes defining and regulating its jurisdiction, un- "less that judgment in terms, or by necessary operation, "gives effect to some provision of the State Constitution, "or some legislative enactment of the State which is "claimed by the unsuccessful party to impair the obliga- "tion of the particular contract in question."

The other authorities cited in our brief are equally as strong.

The case at bar was twice before the Supreme Court, and will be found reported in 186 Ill., 510 as Lightcap *v.* Bradley and the last time as Bradley *v.* Lightcap, 201 Ill., 511.

The decisions of the Supreme Court, in both cases, as to the effect of the mortgage or trust deed to Johnson the trustee; the nature and character of the title or interest it conveyed; how it was regarded by the law of Illinois; what title and estate still remained in McCune, or his grantee, Prettyman; the effect of a valid foreclosure and sale upon the rights and liabilities growing out of the trust deed and the trust deed itself, when and by what means the contract obligation terminated; what relation the plaintiff in error assumed when she became the purchaser at the master's sale; and the nature, character, and effect of the certificate of purchase, were based entirely upon the local law of the State. There is nothing to be found in either

opinion where the court applied the statute complained of to any of these questions. In the last opinion in the Supreme Court, 201 Ill., 519, the court speaking by Mr. Justice Cartwright, said: "She adopted the method "of an ordinary foreclosure, and the statute did not "operate upon that remedy until after the decree and "sale, when the contract right had been fixed and de-"termined by the court and the contract created by the "trust deed had come to an end, so far as the land was "concerned. When the defendant (plaintiff in error) "purchased the land at the sale, under the decree, she "assumed an entirely new relation arising out of the "statute and not depending on any privity of contract. "The sale discharged the land from the trust deed and "transferred the lien created by the contract into a "statutory lien by the certificate of purchase, and the "land was released as security for the balance of the "debt. (Smith *v.* Smith, 32 Ill., 198; Seligman *v.* Laub-"heimer, 58 Ill., 124; Ogle *v.* Koerner, 140 Ill., 170; "Davis *v.* Dale, 150 Ill., 239.) This new relation came "into existence by the purchase at the master's sale on "Oct. 27, 1879, seven years after the passage of the act "in question, and that relation was the same in defen-"dant's (plaintiff in error) case as it would have been "if some other person had been the purchaser." At page 524, the court says: "Under repeated decisions, the in-"terest of the defendant (plaintiff in error) in the "premises after her purchase, was only such as the cer-"tificate of purchase gave her."

It will be observed that the section of the statute complained of does not provide for the issuing of the certificate of purchase, and does not operate upon anything until the certificate is issued, and not even then until redemption expires. Section 16 of the same statute is that which provides for issuing the certificate, and not until Section 16 had been complied with was there anything in existence upon which Section 30 could operate, and the Supreme Court did not apply it to anything except the certificate after all contract obligations had

terminated and the rights of the parties had become fixed in accordance with the general law of the State.

It is true, that Section 30, which is complained of, was enacted in 1872, and subsequent to the McCune trust deed, and also that the Supreme Court held it to be a statute of limitation as it undoubtedly is, and upholds its validity, and applies it as a limitation statute in this case, but the court does not apply it to a contract obligation or anything that was in existence when the statute went into force and effect. On the contrary, the court expressly decides that all contract obligations had terminated and ceased to exist, and a new relation had been assumed in no wise depending on contract, but growing out of the statute of the State, before the section complained of operated. We do not understand that this court is authorized or assumes to review the judgment of State courts, merely because a statute, which effects only the remedy, in no wise impairing a contract obligation, and giving a reasonable time to the party affected to pursue his remedy, is enacted subsequent to the date of the contract. On the contrary, it is only when the subsequent legislation strictly impairs the obligation, or under the guise of regulating the remedy, does impair the obligation, that this court is authorized to review the judgment of the State court under or by virtue of the constitutional prohibition against the impairment of contract obligation, and as her relation and rights as purchaser at the master's sale, and as holder of the certificate of purchase were acquired under the statute seven years, three months and twenty-six days after the statute took effect and gave her five (5) years after redemption expired to obtain a deed to the land we think this court, like the Supreme Court of Illinois, will find some difficulty, in the light of adjudged cases, in holding ~~the law of~~ the statute deprived her of property without due process of law or that the State Supreme Court wrongly interpreted or applied the law

(For further discussion and authorities regarding the Fourteenth Amendment see post X.)

VII.

It is insisted that the plaintiff in error had an equitable title such as is required by Section 4 of Chap. 83. Starr and Curtiss annotated statutes of Illinois, which reads as follows:

"Actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual residence thereon for seven successive years having a connected title in law or equity of record from this State or United States, or from any public officer or other person authorized by law of this State to sell such land on execution or under any order, judgment or decree of any court of record shall be brought within seven years next after possession taken as aforesaid; but when the person shall acquire such title after taking such possession the limitation shall begin to run from the time of acquiring title."

We fail to see any foundation for the plaintiff's in error claim under this statute as we think the court will find when it comes to examine the authorities relied upon, ~~in the court below~~. We will, however, call the court's attention to a few principles of law. There never has been a time in the history of the jurisprudence of Illinois when a certificate of purchase constituted title or even color of title to lands sold by sheriff, master in chancery or other person under and by virtue a judgment or decree, nor does such certificate ever operate to pass title or give right of possession at any time. Under this section of the statute the party who relies upon it as a defense must show a higher and better title than is required by Section 6 of the same statute which only requires "color of title" and under Section 6 the Supreme Court of Illinois has invariably held that a certificate of purchase is not even color of title; and under Section 4 which plaintiff in error relies upon. It has been uniformly held by the court that, in connection with the other requirements of this section, the title which is required by it must be a "*prima facie* good title." The certificate only operates as a lien by way of

action to protect the purchaser, whoever he may be, against intervening claims, as was said in Smith *v.* Colvin supra. "The title does not pass by filing the sheriff's certificate, which only operates as a lien by way of action to protect the purchaser against intervening claims except the right of redemption. Nor does the estate of the debtor become vested in the purchaser by mere lapse of the time of redemption, but only as we think by the sheriff's conveyance under the statute. This mode of transferring title to real estate is in derogation of law which requires the owner's consent, and the statute should be strictly construed, or in other words, title should not be regarded as divested or transferred by sale alone unless such is the plain import of the statute. Before conveyance the purchaser could not maintain ejectment to obtain possession, and *pari ratione* he can not defend a possession obtained against the consent of the debtor."

The title which is required under this section of the statute was passed upon by this honorable court in Moore *v.* Brown, 52 U. S. (11 How.), 414. Speaking of this statute through Mr. Justice Wayne this court said: "The legislature intended to extend its protection to persons who occupied land under a connected title *prima facie* good, against proof *aliundi* which would rebut or destroy such *prima facie* title," and this is the construction which the Supreme Court of Illinois has ever given to it. See Elston *v.* Kennicott, 46 Ill., 207, the opinion rendered on the rehearing of that case.

This section of the statute was borrowed from the statute of Kentucky, and the Supreme Court of that State in Sikes Heirs *v.* Kings Heirs, supra, in passing on the question as to what kind of a title the statute required said: "A connected title in law or equity from the commonwealth does and must mean such a title when tested by its own face and not tried by the title of others."

The court will readily see from the authorities cited under diversions III and IV, of our brief, that a certificate of purchase neither gives the holder of it title or

right of possession, either before or after redemption expires; but, for the sake of argument, suppose the certificate of purchase after redemption expired was a *prima facie* title during the five years in which she had the right to take out a deed, when she lost her right to a deed, which would convey to her the legal title, by the bar of the statute she no longer had any equitable title. It is said in the argument filed for plaintiff in error "a purchaser has a complete equitable title when he is entitled to and may *compel* a conveyance, and plaintiff in error had a right to a deed, and so had to complete equitable title when the time for redemption had expired, and she became entitled to the master's deed."

If this was true, still the conditions of the statute is not fulfilled. The equitable title, i. e., a *prima facie* good title must continue seven years, as well as the possession of the land, and in accordance with their own claim of what it takes to constiute an equitable title when she could no longer "compel a conveyance" she no longer had a *prima facie* title.

But we are not without direct authority on this much disputed question concerning her alleged vested right and title. Ryhiner *v.* Frank, 105 Ill., 326, was an action of ejectment. Ryhiner commenced an action of ejectment against Frank to recover certain lots in Effingham. One Newbank was the common source of title. One source of the plaintiff's title was a sheriff's deed executed to him on a certificate of purchase from the sheriff who had sold the lots under execution issued on a judgment *v.* Newbank rendered on the 6th of March, 1871, upon which execution issued and the land sold Aug. 7, 1871, the judgment was rendered while he owned property, and prior to a trust deed which he gave on the property. The property was sold under the trust deed and the defendant connected himself with the title under this sale. No deed was taken out on the sheriff's certificate of purchase until Dec. 21, 1878, at which last date Ryhiner, to whom the certificate of purchase had been assigned, received a sheriff's deed. This was upward of five years and ten months after the expiration

of the time of redemption, and the objection was made in that case as in this, only with much stronger reasons that the statute did not and could not apply, that rights were vested in the holder of the certificate prior to the passage and taking effect of the statute. And that as the sale was made and certificate issued in 1871, nearly a year before the act of 1872 went into effect, and at that time there was no express limitation limiting the time when deed could be taken out, and as the court had declared, Rucker *v.* Dooley a deed might be issued at any time within eight years and three months after sale, or seven years after expiration of redemption to apply the statute of limitation subsequently prescribed deprived the holder of the certificate of vested rights; but the court held otherwise. Mr. J. Sheldon, speaking for the court as a unit said (330):

"The objection is not valid that the statute fixes a limitation for taking out the deed, different from that declared by this court in Rucker *v.* Dooley, 49 Ill., 383, and that the judgment and sale under it were prior to the passage of the statute. The statute was one of limitation and effected only the remedy. It took away no vested right and like all other statutes of limitation, was free from objection on this score, where a reasonable time, as was the case, here is left for the pursuit of the remedy. It was surely competent for the legislature to change the time of limitation which had previously been declared by this court."

Again in Peterson *v.* Emmerson, 135 Ill., 55, 59, 60.

This was a bill in chancery by Elizabeth Emmerson to compel the master in chancery to execute a deed on a certificate of purchase which had become barred by this same section of the statute which bars the plaintiff in this case.

In 1865 one Peterson, the then husband of Mrs. Emmerson, gave a mortgage to one Emmerson on 40 acres of land to secure an indebtedness. She joined in the execution of the mortgage. Peterson died in 1866 leaving his widow and two children by a former wife, a son and daughter, the daughter married Hiram

Smith, and died leaving an infant child in 1867. Peterson's widow married Emmerson, the mortgagee. She resided on the land during her widowhood and for a time after she married Emmerson, when they moved off of it. In 1871 Emmerson foreclosed his mortgage and on November 25, 1871, the master in chancery sold the land under the decree of foreclosure and Mrs. Emmerson bid it off and received the certificate of purchase. In 1872 she took possession of the premises and continued in possession, received the rents and profits, and paid all taxes, and was in possession at time she filed her bill, but no deed was ever executed on the certificate of purchase. Fifteen years, 10 months, and 11 days elapsed after the expiration of the period of redemption, and the filing of the bill.

It was urged (see Ab. of Argument, pp. 56, 57) that the statute of 1872 did not apply because the sale was made and certificate of purchase issued before the statute was enacted; also that the rights of the parties were not affected or changed by the decree of foreclosure and sale thereunder. That the decree of foreclosure was still in force and that the title of the heirs of the mortgagor were divested by their failure to redeem, that even if the certificate of purchase was dead for the purpose of getting a deed, still the whole suit of foreclosure, decree and sale was left unimpaired. That Mrs. Emmerson had everything she needed including the possession of the land except the evidence of her title. That she was the owner of the property in equity, but lacked evidence of it. The circuit court sustained her contentions, and the heirs of the mortgagor took the case to the Supreme Court of the State. Mr. Justice Baker delivered the unanimous opinion of the court and after reaffirming what was said by the court in Ryhnier *v.* Frank *supra* said pp. 59, 60: "It is also urged that it lies within the general equity powers of the chancery court to order and decree that the master should execute and deliver to defendant in error a conveyance of the land, predecated upon the foreclosure sale of November, 1871, and

Rucker *v.* Dooley, 49 Ill., 377, and Schrader *v.* Peach, 77 Ill., 615, and cited as authority in that behalf.

Rucker *v.* Dooley was decided prior to the enactment of 1872 and when there was no express legislation on the subject, and the court there formulated, based upon the analogies of the law, a rule which it deemed equitable and just. That rule was, that the lapse of twenty years from the date of sale and certificate was an *insuperable* bar to the execution of a deed; that after the expiration of fifteen months allowed for redemption, and within eight years and three months from the date of sale, a deed should be made by the proper officer upon presentation of the certificate of purchase, and that after the eight years and three months had elapsed and within twenty years a deed *might* be made upon an order of court entered after notice to parties interested. But this rule was abrogated by the legislative enactment of 1872, not only in respect to the period of limitation, but also by the provision that if a deed was not taken out within the time limited, the certificate should be null and void. It is sticking in the bark to say, that notwithstanding the certificate is null and void, yet the *sale* which it was given to evidence has such vitality and force that a court may decree, by virtue thereof, the preemptory and absolute transfer by its officer of the property and title of one person to another and different persons. It does not alter the case that defendant in error has been in actual possession of the land since 1872 claiming ownership and has paid all the taxes assessed thereon. Such acts do not take the case out of the statute as to justify the transfer to her of the legal title vested in the heirs of the mortgagor."

The question was before the Supreme Court again in Seeberger *v.* Weinberg, 151, Ill., 369, 373-4, 380-1.

It was a bill in chancery by Seeberger, against the heirs of the mortgagor and other parties. The substantial facts so far as this case is concerned are as follows. Seeberger being the owner of the lot in controversy conveyed the same to one John Farr, on June 3,

1872, for $1,700. $900 of the purchase price was secured by Farr executing three notes to Seeberger for $300 each, and secured the same by trust deed on the lots to one Hodges as trustee. In 1873 Farr conveyed the lots to his wife, Sarah Ann Farr, and subsequently died. Default was made in the payment of the notes and a bill in chancery to foreclose the trust deeds was filed upon which a decree of foreclosure, was entered in January, 1876; under this decree the lots were sold by the master in chancery February 14, 1876, and Seeberger, the *cestui que trust*, bid the same off, became the purchaser, and received the master's certificate of purchase. No redemption was made, and no deed taken out on the certificate of purchase. From the date of the sale, however, Seeberger claimed the lots and paid all taxes and assessments thereon and built sidewalks on the street adjacent thereto. In 1892 Seeberger contracted to sell the lots to Fanny Weinberg, part of the purchase price was paid and Seeberger was to furnish an abstract of title so that Mrs. Weinberg could have her attorneys examine the same, which was done, and the attorneys discovered that no deed was ever taken out on the certificate of purchase, and so informed Seeberger. Mrs. Weinberg then proceeded to get a deed for the lots from Mrs. Farr and the heirs of the mortgagor, and thereupon Seeberger filed his bill setting up the facts and claiming to own the property, &c., &c. The bill was heard on pleadings and proof and the lower courts dismissed the bill and on appeal to the Supreme Court the decree was affirmed. Mr. Justice Bailey delivered the unanimous opinion of the court, and after referring to the statute and to the prior decisions of the court said:

"After the expiration of five years given by the statute for taking out a master's deed, the certificate of purchase became a nullity, and a court of equity can not compel, or authorize, the execution of a deed to the purchaser or his assignees by the officer whose duty it is to make such deed. Such being the condition of Seeberger's title it is difficult to see upon what legal or equitable principle he can now be entitled, as against the

grantees of Farr to any portion of the relief prayed for in the bill. His certificate of purchase being *functus officio* and void, he certainly could have had no remedy against the heirs or representatives of Farr if they had still retained their interest. No remedy could have been asserted by him upon the certificate as that had become a nullity, nor could he have enforced any remedy upon the original mortgage as that remedy had been completely exhausted by the foreclosure and sale. Here the interest in the land acquired by Seeberger by means of his purchase at the foreclosure sale, and evidenced by the certificate of purchase, having been barred by limitation, the only title to the property capable of assertion was that remaining in the grantee or legal representative of Farr, the mortgagor. If Mrs. Weinberg had not succeeded in securing the title by purchase from those in whom it was vested, it might have been asserted by them, or purchased by some third party to the exclusion of both her and Seeberger."

Again, in Brown *v.* Ridenhower, 161 Ill., 239. This was a bill in chancery to set aside two deeds under following state of facts. In 1858 one James Finney being the owner of the land executed a mortgage thereon to one Misenheimer to secure the payment of $127.50. In 1863 Misenheimer filed a bill to foreclose the mortgage, and obtained a decree and one Graham was appointed a special commissioner to sell the land, which he proceeded to do on Sept. 5, 1863. Misenheimer was the highest bidder and secured the certificate of purchase, and the special commissioner made a report of the sale, which was approved. Finney died in March, 1866, without having redeemed the land from the sale. No master's or commissioner's deed was ever issued. Ridenhower was in possession of the land holding the same under a regular chain of conveyances from Misenheimer. In 1892 the heirs of Finney, the mortgagor, conveyed the land to Brown and the bill was filed to set aside this deed as a cloud upon ~~Misenheimer's~~ title, and the court held, Mr. Justice Magruder delivering the opinion, that the holder of the certificate had no title in

law or equity to support the bill, and reverse the decree of the lower court granting the relief, and in doing so quoted with approval what was said by the court in Seeberger *v.* Weinberg, and said "whether the lapse of time is to be given the effect of extinguishing his right, or merely barring his remedy, he has no further title or interest in the premises described in the certificate which either he or his grantee can enforce either in law or in equity."

The statute complained of has been in force for nearly a third of a century, and for more than one-third of the existence of Illinois as a State. One and only one construction has ever been given to it, viz.: as a limitation statute, and no other effect has ever been given to it in this case or any other, and as was said by this court in Saranac L. Co. *v.* Carpenter, 177 U. S. "a statute of limitation will bar any right, however high the source from which it may be derived, provided a reasonable time is given a party to enforce his right."

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VIII.

It has been the constant and consistent holding of this honorable court that the construction of State law by its highest court as to property, the interpretation of State statutes, their application to things, the construction of State constitutions, the validity of statutes, what are rights (exceppt under commercial law of general application), is exclusively with State courts, and that this court will follow their decisions unless clearly violative of federal law.

This is particularly true upon questions affecting the title to real property. In a very recent case, Clarke *v.* Clarke, Mr. Justice White, in delivering the opinion of this honorable court said: "It is a principle firmly established, that to the law of the State in which the land is situated, we must look for the rules which govern its descent, alienation, and transfer, and for the effect and construction of wills and other conveyances;" citing numerous authorities.

Again in Arndt *v.* Griggs, Mr. Justice Brewer said: "The power of the State to regulate the tenure of real "property within her limits, and the modes of its ac- "quisition and transfer, and the rules of its descent, "and the extent to which a testamentary disposition "of it may be exercised by its owners is undoubted. It "is an established principle of law everywhere recog- "nized, arising from the necessity of the case, that the "disposition of immovable property, whether by deed, "descent, or any other mode, is exclusively subject to "the government within whose jurisdiction the prop- "erty is situated."

The strictness with which this rule is adhered to by this honorable court is well stated in the case of Forsyth *v.* Hammond, 166 U. S., 518. In that case, it is said: "The construction by the courts of a State of "its constitution and statutes, is as a general rule "binding on the federal courts. We may think that "the Supreme Court of a State has misconstrued its "constitution or its statutes, but we are not at liberty "to therefore set aside its judgments. That court is "the final arbiter as to such questions."

IX.

Let us examine this case under the IX division of our brief. Turning to the opinion of the Supreme Court of Illinois, we find this case was twice before that court on its merits, once under the title of Lightcap *v.* Bradley, reported in the 186 Ill., 510, and the last time, entitled Bradley *v.* Lightcap, reported in the 201 Ill., 511.

The first time it was before the Supreme Court, the judgment of the trial court was reversed and the cause remanded to the lower court "For further proceedings in accordance with the views expressed in the opinion then filed." This, the trial court, proceed to do on the last trial in that court. The plaintiff in error, not being satisfied with the judgment, appealed the case to the Supreme Court. Now when it came before that court

the second time, the Supreme Court found there was no change in the evidence which altered or affected the rights of the parties in any way or manner whatever from what they were the first time the case was presented, and that every proposition of law and every question presented on the second appeal, was, or might have been presented upon the record in the first appeal and was therefore *res adjudicata*. We quote the language of the court (P. R., p. 260): "On the last trial, the evidence respecting the title of the parties was the same as upon the first trial, as contained in the record, which was reversed in Lightcap *v.* Bradley, supra, and every proposition of law now raised, arose upon the former record. There is no question presented or discussed on this appeal, either relating to the propositions of law submitted to the trial court, or assignment of errors, or in the argument of counsel, that could not have been properly raised on the former record. The decision at that time settled every question which might have been raised and every objection which might have been made, whether then raised and made or not. The doctrine of *res judicata* embraces not only what was actually determined in a former suit, but also extends to any other matter which might have been raised and determined in it. Harvey *v.* Aurora & Geneva Railway Company, 186 Ill., 283. Pease *v.* Ditto, 189 Ill., 456. A litigant can not be allowed to have his case heard in this court, partly at one time and partly at another."

What the Supreme Court of Illinois here decided was alone sufficient to dispose of this case, and it is no answer to what we are now discussing and contending for to say that the Supreme Court went beyond what was necessary to a complete disposition of the case and decided a federal question erroneously or otherwise. As we understand the law and rule governing this court where a case is brought before it for review by writ of error to the highest court of a State, it is not sufficient to warrant a reversal of the State court that there is a federal question involved, and that the State court has

erroneously decided the same, but it is essential that the federal question be the controlling factor and alone sufficient to dispose of the case, and for the purpose of determining whether or not the federal question is alone sufficient to dispose of the case, this court will further examine the case to ascertain if the decision of the State court, based on other matters in the record, is sufficiently broad to maintain its judgment.

In the case of Murdock *v.* The Mayor & Aldermen of the City of Memphis, 20 Wall, 590, this court speaking through Mr. Justice Miller lays down several rules or propositions as flowing from the statute by means of which this case is brought before the court. We believe these rules or propositions, have been consistently followed by this court and can be taken as safe guides by attorneys, in presenting their cause to the court. They are as follows:

"1. That it is essential to the jurisdiction of this court over the judgment of a State court that it shall appear that one of the questions mentioned in the act must have been raised and presented to the State court.

"2. That it must have been decided by the State court, or that its decisions was necessary to the judgment or decree rendered in the case.

"3. That the decision must have been decided against the right, claimed or asserted by plaintiff in error, under the constitution, treaty, law or authority of the United States.

"4. These things appearing, this court has jurisdiction and must examine the judgment so as to enable it to decide whether this claim of right was correctly adjudicated by the State court.

"5. If we find that it was rightly decided, the judgment must be affirmed.

"6. If it was erroneously decided against plaintiff in error, then this court must further inquire, whether there is any other matter or issue adjudged to the State court which is sufficiently broad to maintain the judgment of the court notwithstanding the error in deciding the issue raised by the federal question. If this is found

to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue.

"7. But if it is found that the issue raised by the question of federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the State court of any other matter or issue which is sufficient to maintain the judgment of the court, without regard to the federal question, then this court will reverse the judgment of the State court and will either render such judgment here as the State court should have rendered, or remand the cause to the State court as the circumstances of the case may require."

We believe these several rules or propositions have been constantly and consistently adhered to by this court and no one of them with greater strictness than the 6th. In a very recent case, California Powder Works *v.* Davis, 151 U. S., 389, this court, through its distinguished Chief Justice, reiterates it in these words: "It is axiomatic, that in order to give this court jurisdiction on a writ of error to the highest court of the State in which a decision in the suit could be had, it must appear affirmatively, not only that a federal question was presented for decision by the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered, could not have been given without deciding it, and when the decision complained of rests on an independent ground, not involving a federal question and broad enough to maintain the judgment, a writ of error will be dismissed by this court, without considering the federal question, which may also have been presented."

Applying these principles of law to the case at bar and what is there left of the plaintiff's contention? We believe this court will agree with us that the Supreme Court of Illinois made no error in holding the statute complained of to be constitutional, but suppose it erred, how does it help the plaintiff's case? It certainly will

not be contended that the doctrine of *res adjudicata*, which the court applied to this case, presents a federal question, or that this court is at liberty to overrule the State court in applying it to this case. It is a principle of law too firmly established in the jurisprudence of Illinois to be lightly overthrown, that not only every proposition of law and questions raised or discussed on the first appeal, but every question that might have been raised and passed upon, but was not, can not be raised on a second appeal, but will be considered as having been waived by the party who seeks to raise it for the first time in that court on a second appeal; as the court said in its opinion: "A litigant can not be allowed to have his case heard in this court partly at one time and partly at another."

The doctrine of *res adjudicata* which was applied by the Supreme Court when this case was before it, is sufficiently broad to maintain its judgment and the alleged federal question is not necessarily the controlling factor neither is it "alone sufficient to dispose of the case."

X.

We submit that there is absolutely no foundation in this case to support the contention of the plaintiff in error, that the statute complained of, or the decision of the Supreme Court violates the Fourteenth Amendment to the U. S. Constitution or Sec. 1979 of the U. S. Revised Statute.

The provision that no State shall deprive any person of his property "without due process of law" is not an inhibition on State legislation. "Due process of law" and "the law of the land" have the same meaning.

Legal proceedings, according to the rules and forms which have been established for the protection of private rights, binding alike upon all, is due process of law. It will not be, at least in reason it can not be, contended but that plaintiff in error pursued the usual, well known and most frequently used means to enforce the mortgage

lien, or that the court denied her any right she was entitled to, under the law, but on the other hand, the court proceeded to carry into effect its decree, and through his sworn office, the master in chancery made the sale. The certificate of purchase, which gave a lien upon the land for the amount of the bid, was all the court could give her or any person. Now there has ever been a limitation upon the lien and rights given by a certificate of purchase. This is settled by the case of Rucker *v.* Dooley, 49 Ill., 378, and Harmon *v.* Larned, 58 Ill., 167. The Supreme Court did not make the law in those cases, but merely declared what it was, and applied it. The plaintiff in error cites the former case with approval, and argues that at least she should have the same limitation applied to her case, and if she does not, then not only the obligation of the contract is impaired, but also she is deprived of her property without due process of law.

We do not understand that the Fourteenth Amendment undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced or lost, provided the method adopted gives a reasonable opportunity to the party affected to assert his rights before they are lost.

The rights of a State to pass statutes of limitation and to change existing limitation laws, existed long prior to the adoption of the Fourteenth Amendment. It is part of the police power which belongs to the State, and although rights might be lost which but for the statute would continue to exist, still it was a method which the law recognized, and if the statute allowed a reasonable time to enforce the right before the bar took effect, it was in accordance with the law of the land or "due process of law."

Wheeler *v.* Jackson, 137 U. S., 245.
Terry *v.* Anderson, 95 U. S., 628.
Saranac Land Co. *v.* Roberts, 177 U. S., 318.

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We do not know that we can shorten this argument more, or do better, than to briefly call the court's atten-

tion to some of the cases where the court has been called upon to define and place construction on this amendment, and to determine to what extent it limits the power of a State to legislate.

In Caldwell *v.* Texas, 137 U. S., 697, this court speaking through its learned Chief Justice, said: "due process is secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of Government unrestrained by the established principles of private rights and distributive justice."

Again in Grozzar *v.* Tiernan, 148 U. S., 661, speaking through the same learned judge, this court said: "Irrespective of the operation of the Federal Constitution, and restrictions asserted to be inherent in the nature of American Institutions, the general rule is that there are no limitations upon the legislative power of the State, except those imposed by its written constitution. * * * The amendment (14th) does not take from the States those powers of police that were reserved at the time the original Constitution was adopted. Undoubtedly it forbids any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances in the enjoyment of their rights. * * * It is enough that there is no discrimination in favor of one and against another of the same class (citing numerous authorities), and due process of law, within the meaning of the amendment, is secured if the law operates on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

These principles were repeated by this court substantially in Leeper *v.* Texas, 139 U. S., 462.

In Iowa Central Railroad Company *v.* Iowa, 160 U. S., 393, speaking through Mr. Justice White, the court said: "It is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for these purposes give reasonable notice and afford a fair opportunity to be heard before

the issue is decided," and the court further said: "Whether the court of last resort of a State has properly construed its own constitution and laws in determining that a summary process under those laws was applicable to the matter which is adjudged, is purely a question of State law binding upon this court."

In Davidson *v.* New Orleans, 96 U. S., 102, it was held that: "due process of law" does not necessarily imply a regular proceeding in a court of justice, nor after the manner of such courts."

We invite the attention of the court to what was said in the case of the Missouri Pacific Railroad *v.* Humes, 115 U. S., 512, 518. Mr. Justice Field delivered the opinion, after referring to the fact that similar provisions were to be found in the constitution of every State as that found in the Fourteenth Amendment, that the same meaning must be given to the words "due process of law," and that it would be difficult and perhaps impossible to give to these words a definition broad enough to cover every case, said: "In England the requirement of due process of law in cases where life, liberty and property were affected, was originally designed to secure the subject against the arbitrary action of the Crown, and to place him under the protection of the law. The words were held to be equivalent of 'law of the land.' And a similar purpose must be ascribed to them when applied to a legislative body in this country; that is, that they are intended in addition to other guaranties of private rights to give increased security against the arbitrary deprivation of life, liberty and the arbitrary spoliation of property. But from the number of instances in which these words are invoked to set aside the legislation of the States, there is abundant evidence as observed by Mr. Justice Miller in the case referred to (Davidson *v.* New Orleans, 96 U. S., 97), 'that there exists some strange misconception of the scope of this provision as found in the Fourteenth Amendment.' It seems, as he states, to be looked upon as a means of bringing to the test of the decision of this court, the abstract opinions of every unsuccessful litigant in a State

court, of the justice of the decision against him, and the merits of the legislation on which such decision may be founded * * *.

"If the laws enacted by a State be within the legitimate sphere of legislative power and their enforcement be attended with the observance of those general rules, which our system of jurisprudence prescribed for the security of private rights, the harshness, injustice and oppressive character of such laws will not invalidate them as affecting life, liberty or property without due process of law."

In Minneapolis Railroad Co. *v.* Beckwith 129, U. S., 26, 29, the court says: "The Fourteenth Amendment does not limit, nor was it designed to limit the subjects upon which the police power of the State may be exerted."

We will now ask the Court's attention to one other case decided by this court, that of Hurtado *v.* People, 110 U. S., 516, where this court, speaking through Mr. Justice Matthews, said: "Due process of law in the Fifth Amendment referred to the law of the land which derives its authority from the legislative power conferred on Congress by the Constitution of the United States, exercised within the limits therein prescribed and interpreted according to the principles of the common law. In the Fourteenth Amendment by parity of reasoning it refers to the law of the land in each State, which derives its authority from the inherent and reserved powers of the State, exercised within the limits of those fundamental principles of liberty and justice which lies at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws and alter them at their pleasure."

We call the court's attention to a decision of the Supreme Court of Illinois bearing on this same question.

Stearns *v.* Gittings, 23 Ill. 387, was an action of ejectment. (It is one of the three cases cited by plaintiff in error as Newland *v.* Marsh, 19 Ill., 379, the three cases being heard and reported together.) Stearns brought

ejectment against Gittings. The plaintiff showed a regular chain of title from the United States and Gittings, the defendant, rested his defense on a tax deed as color of title and seven years' payment of taxes under the second section of the Act of 1839, the same being Sec. 7 of Chapter 83 of the present statute of Illinois. The section provides: "Wherever any person having color of title made in good faith to vacant and unoccupied lands, shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal ownr of said vacant and unoccupied lands to the extent and according to the purport of his or her paper title," &c., &c. On the second trial of the ejectment suit the defendant defeated the plaintiff under this section of the statute, and the plaintiff appealed to the Supreme Court, and it was insisted the statute was unconstitutional as controvening that clause of the State constitution which provided: "That no freeman shall be imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the *law of the land*."

It was contended that to hold this statute valid and thereby the plaintiff lost his land, was to deprive him of his property contrary to the law of the land and without the judgment of his peers, but the court held the law was a limitation act, and valid, and in doing so said: "This act like all other limitation laws, does not transfer the title of the owner to the defendant, but simply prohibits him, after the bar of the statute has become complete, from asserting his rights. The statute creates the bar, and the court prohibits the owner from asserting his rights against it. Whilst it is usual in framing limitation acts which bar the entry, or the right of recovery, to make possession the most important requirement in the creation of the bar, yet no decision of which we are aware has ever held that possession is essential to the constitutional validity of such enactment. That the act should afford reasonable time

and opportunity for the assertion of the right before barring the remedy for laches and non-assertion of the right within the limited period, is believed to be all the constitution requires. The terms and conditions upon which the bar may become complete in other respects must necessarily be left to the discretion of the legislature."

Judge Cooley in his excellent work on Constitutional Limitation, p. 434 (6th Ed.), says: "Due process of law in each particular case means such an exertion of the power of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs," and he cites a large number of authorities in support of this.

If then the Fourteenth Amendment did not take from the State of Illinois the right to exercise the powers of government, and to legislate and enact laws for the benefit, welfare and interest of its citizens, so long as its acts were not arbitrary and oppressive, and there was no discrimination in favor of one as against another of the same class, and there was a reasonable time given for the individual to comply with its laws, how can it be said that this statute, or the construction the Supreme Court of Illinois gave it, violates the Federal Constitution? The legislature of the State was not only reasonable, but it was indeed liberal in the time it gave for obtaining a deed on a certificate of purchase. The legislative body owed it as a duty to the people which it represented, to prescribe a reasonable limitation beyond which a certificate of purchase should cease to be a lien, rendering the title to land uncertain, practically taking it out of the market and standing in the way of free and ready sale and transfer.

The plaintiff in error had five years after redemption expired in which to present her certificate to the master in chancery, receive her deed and become vested with the title to the property. If the master refuses to execute the deed, the courts of the State were open to

her to compel the master to execute it, besides, if the deed was wrongfully withheld by the officer whose duty it was to execute it, the time during which the deed was wrongfully withheld constituted no part of the five years necessary to complete the bar. That she did not obtain the deed and become vested with the title to the land was no fault of the statute or law. For five years the right rested with her to demand it, during all of which time the courts of State stood ready to assist her. The court could not compel her to take the deed and thereby become vested with the title, but it could compel the execution of the deed to her if she asked for it. She did not see fit to ask for one; she would not even stretch forth her hand and present her certificate of purchase to the master that he might execute to her the deed it called for, and she now has no one nor any law upon which to cast blame, except herself.

XI.

That the decisions of the Supreme Court of Illinois, to which we have directed this honorable court's attention, in the authorities we have cited in our brief, have established rules of property, which if regarded by this court, are decisive of this case, and upon which the judgment must be affirmed, we entertain no doubt, it has been the constant and consistent holding of that court.

First. That the title conveyed by a mortgage is in the nature of base or determinable fee; that the term of its existence is measured by that of the mortgage debt.

Second. That the mortgagor is the real owner of the land for all purposes, subject only to the lien of the mortgage.

Third. That the debt is the principal thing and the mortgage a mere incident.

Fourth. That when the debt, the principal thing, is paid, released, discharged or barred by the statute of limitations, the mortgage, the incident, is also gone, and the mortgagee's title is extinguished by operation of law,

and the title of the mortgagor to the land mortgaged freed from the lien.

Fifth. That a foreclosure of the mortgage by a decree in chancery, followed by a sale of the premises under the decree, the foreclosure and sale being valid, extinguishes the mortgage lien, discharges the land from the mortgage, and so far as the mortgage and land is concerned, operates as a payment of the debt.

Sixth. That the relations, which the purchaser at the foreclosure sale, whether he be the mortgagee, *cestui que trust*, or a stranger, sustains to the premises which were mortgaged, does not depend on contract, but is a statutory relation and the only right or interest acquired by his purchase is such as the certificate of purchase gives him.

Seventh. That the only right or interest the certificate of purchaser gives the holder of it is (1) the right to receive the redemption money if redemption is made, and, if redemption be not made, (2) the right to a deed by complying with the statutory requirements, which deed, when executed, will divest the title that the mortgagor had in the premises at the time the mortgage was executed, and vest the same in the holder of the certificate of purchase to whom the deed is executed, but the certificate of purchase does not divest the title of the mortgagor, nor disturb his right to possession, which still continues in him until the deed is executed.

Eighth. When the right of the holder of certificate of purchase to a deed is lost by his own laches in sleeping upon his right to a deed until the bar of the statute is complete, he has no further right or interest in the land, either in law or equity.

The court will find these several rules reviewed somewhat in the opinion in the case at bar, and still more fully in the opinion of the Supreme Court of Illinois, rendered the first time this case was before it, as Lightcap *v.* Bradley, found in the 186 Ill., 510, where the court reviews many of the cases, and reaffirms these rules as settled principles in the jurisprudence of the State. The statute complained of has been in force for nearly a third of a century, during which time the courts of the

State have been called upon to enforce its provision in a number of cases, some of which have reached the Supreme Court of the State, and from the first case to the last, the Supreme Court has held it to be a valid statute of limitation and applied it as such. No new construction, no new interpretation, no new application of the statute or any law of the State was given or made by the court in this case as this court will readily see by an examination of the cases cited in our brief going back as far as 1842 and even earlier.

As we understand the law laid down by this court, the construction of a State statute of limitation, and the application of the same to the case, is peculiarly within the province of the State Supreme Court, and not reviewable by this court. Bacon *v.* State of Texas, 163 U. S., 207. Neither is the construction which a State Supreme Court places upon its own judgments and decrees reviewable. Newport Light Company *v.* City of Newport, 151st U. S., 527.

In the case of Balkman *v.* Woodstock, 154 U. S., 177, it is said by this court that "no laws of the several States have been more steadfastly or more often recognized by this court from the beginning as rules of decisions in the courts of the United States than statutes of limitations as enacted by the legislature of the State, and as construed by its highest court." And again in Suydam *v.* Williams, speaking through Mr. Justice Campbell, this court says: "Every sovereign has the exclusive right to command within its territory and the laws which originate rights to real property are commands addressed to the members of the State, requiring them to abstain from interference with the property rights they recognize or establish, and in respect to this subject the sovereignty of a State, has not been impaired by her adoption of the Federal Constitution. The power to establish Federal courts and to endow them with jurisdiction to determine controversies between certain parties, afford no pretext for abrogating any established law of property or for removing any obligation of her citizens to submit to the rule of the local sovereign."

REVIEW OF PLAINTIFF'S CITATIONS.

In order to determine what application if any a case, cited as authority, has upon the questions involved in the case in which it is used we must understand the facts in the authority, and what was decided and what point the court was talking to in deciding the case so that we will not be led into taking some expressions of the court and twist them into applying to another case where another and different state of facts exist not at all like the case cited, and where a different set of principles apply. Keeping this in view, we will briefly review some of the authorities cited by plaintiff in error and such as will give the court a fair understanding of the cases relied upon by her counsel.

The case of Bronson *v.* Kinzie, 1 How., 311, was a case where a mortgage was given on land in Illinois in 1838. At the time the mortgage was executed there was no law allowing time for redemption of the premises from a sale under a foreclosure of the mortgage, nor any appraisement of the land required, but the purchaser was entitled to a deed and possession of the premises at once. Subsequently, in 1841, the legislature passed an act in effect allowing twelve months in which the mortgagor had the right to redeem from the sale and his judgment creditors three months thereafter; also providing for the appraisement of the land by three householders and that no sale should be made for less than two-thirds its appraised value, and extended the act so that it embraced a sale under a decree of the mortgage in controversy in the suit. It will be observed that during all of the time allowed for redemption the mortgagor had the right to remain in possession of the property and receive the rents and profits free and that there could be no sale for less than two-thirds of its appraised value. In March, 1841, Bronson filed his bill in the United States Circuit Court of Illinois to foreclose the mortgage. In June, 1841, after the law was passed, the federal circuit court adopted a rule substantially embracing the provisions of the statute of 1841. The bill filed by Bronson came

on for hearing at the December term, 1841, and the complainant moved the court for a final decree of strict foreclosure of said mortgage, or that the mortgaged premises should be sold to the highest bidder without being subject to said rule, or the act of the legislature. The motion was resisted and the judges were divided in their opinion on the following points:

"1st. Whether the decree in the case should be so entered as to direct a sale of the said mortgaged premises according to the said statute of the State of Illinois, above mentioned, or whether the same premises should be sold at public auction to the highest bidder without regard to said law.

"2d. Whether the decree in the case shall or shall not direct the sale of the mortgaged premises without being first valued by three householders and without requiring two-thirds of the amount said valuation to be bid according to the said act of the State of Illinois.

"3d. Whether the terms of the mortgage in this case do or do not require it to be excepted from the operation of the rule above recited."

And the cause with said points was certified to this court, and the court held the law unconstitutional, but in doing so the court said:

"If the laws of the State passed afterwards had done nothing more than changed the remedy on contracts of this description, they would be liable to no constitutional objection. For undoubtedly a State may, at pleasure, regulate the modes of procedure in its court in relation to past contracts as well as future. It may, for example, shorten the period of time within which claims shall be barred by the statute of limitations. It may, if it thinks proper, direct that the necessary implements of agriculture or the tools of a mechanic or articles of necessity in household furniture shall, like wearing apparel, not be liable to execution on judgments. Regulations of this character have always been considered in every civilized community as properly belonging to the remedy to be exercised or not by every sovereignty according to its own views of policy and

humanity. It must reside in every State to enable it to secure its citizens from unjust or harassing litigation and to protect them in those pursuits which are necessary to the existence and wellbeing of every community. And although a new remedy may be deemed less convenient that the old one, and may in some degree render the recovery of the debt more tardy and difficult, yet it will not follow that the law is unconstitutional. Whatever belongs to the remedy may be altered according to the will of the State, providing the alteration does not impair the obligation of the contract.

Barnitz *v.* Beverly, 163 U. S., 118, is very much such a case as Bronson *v.* Kinzie. In the Barnitz case, the notes and mortgage were given in 1865, default having been made in January, 1893, Barnitz, the mortgagor, commenced proceedings to collect his claim and foreclosed the mortgage. On July 7, 1893, a judgment was rendered against the mortgagor, and other defendants, for a foreclosure of the mortgage and sale of the premises. Appraisement having been waived, the judgment, pursuing the laws of Kansas, provided for a stay of execution for six months. On January 9, 1894, an order of sale was issued under which the premises were sold February 12, 1894. On February 26, 1894, the motion for the confirmation of the sale came on for a hearing and Beverly appeared and claimed to be the owner of the premises, by conveyance subsequent to the mortgage, and resisted the confirmation, insisting that the purchaser was only entitled to a certificate of purchase under the law of Kansas, passed in 1893, which gave eighteen months in which to redeem and postponed the purchaser's right to immediate deed and possession, and also prohibiting a second sale of the property under any circumstances for any deficiency. Beverly was defeated in the lower court and appealed to the Supreme Court of the State, which affirmed the judgment of the lower court, on the ground that the statute did not apply to contracts made before its passage because it impaired the obligation. A change in

the membership of the court took place, and a rehearing was had, and on the rehearing the court held the statute did apply and was valid, and the case was brought to this court, and this court, under the facts in these cases, held the law was unconstitutional. In doing so the court said (p. 130) "the act carves out for the mortgagor, or the owner of the mortgaged property, an estate of several months more than was obtainable by him under the former law, with full right of possession, and without paying rent or accounting for profits in the meantime, what was sold under this act was not the estate pledged but a remainder, an estate subject to the possession, for eighteen months, of another person who is under no obligation to pay rent or to account for profit."

And the court puts the question: "Where in a mortgage an entire estate is pledged for the payment of a debt with right to sell the mortgaged premises, freed from redemption, can that be valid legislation, which would seek to substitute a right to sell the premises subject to an estate or right of possession in the debtor or his assignees for eighteen months?"

We submit that neither of these cases have any application to the case at bar. There is no analogy between a statute of limitation such as we are considering in this case, and a statute which carves out of mortgaged premises, a separate estate of substantial duration, and gives it to the mortgagor after the mortgage is given, as was done in Bronson *v.* Kinzie and Barnitz *v.* Beverly.

Carroll *v.* Ballance, 26 Ill., 9, 16, 17, was an ejectment. The only questions before the court were these, we quote the language of the court in its opinion as declared by Mr. Justice Breese: "The questions presented by this record are: Can a mortgagee, the mortgage debt being payable by installments, for which separate notes are given, recover the mortgaged premises in ejectment against the mortgagor, or those claiming under him. When one or more of the notes are due and unpaid, and without notice to quit to the party

in possession before action brought" and the court ver
properly held that it could, and it was to those ques
tions alone the court was speaking.

Chickering *v.* Failes, 26 Ill., 507, was a bill filed b
the appellants against appellees to redeem from tw
certain mortgages. There had been a strict foreclosur
and to understand the application of the quotatio
from the opinion of the court which counsel for plain
tiff in error have made, they should have stated wha
point the court was talking to. That portion of th
opinion immediately proceeding what they quote, read
as follows (p. 519):

"It is, however, urged with much earnestness, tha
the mortgage and the *decree of strict* foreclosure ar
color of title, which, with seven years' payment o
taxes, operates as a bar to the redemption. In proceed
ings in chancery, the statute may be interposed an
relied upon, as in action at law. While it is only i
analogy to the law, yet it, in the same manner and t
the same extent, follows the law in its application
*Then is a mortgage and decree of strict foreclosure colo
of title?*"

Now it is in answer to this question that the cour
uses the language quoted by opposing counsel, and th
court did not say nor intend to be understood, that
mere mortgage constituted such color of title, as i
required by the seven year limitation law. But ther
can be no doubt about it when it is followed by a decre
of strict foreclosure. A mortgage as such is not colo
of title. See Robbins et al. *v.* Morse, 129 Ill., 30.

Mulvoy *v.* Gibbons, 87 Ill., 367, 382, was a proceedin
instituted under the Burnt Record act, and what th
court was discussing in that part of the opinion quoted
related also to a decree of strict foreclosure, as will b
seen by what immediately precedes the quotation
Many of the other authorities cited are cases where th
court was talking in reference to decrees of strict fore
closures and such cases are not and can not be author
ity in a cause like the one at bar. The effect of a decre
of strict foreclosure is to vest absolutely, the property o
the mortgagor in the mortgagee.

Williams *v.* Brunton, 3 Gilm., 600, 622-3, was ejectment by Williams *v.* Brunton. A recovery had been had in the case. Then one King, by his attorneys, came in and moved the court to set aside the judgment and be let in to defend as sustaining such relations to Brunton that he had a right to be substituted in the place of Brunton. The court granted the motion, and ordered the plaintiff to join issue, which he refused to do. The case was tried, the defendant found not guilty, and judgment rendered and an appeal taken to the Supreme Court.

King was the mortgagee of the land from one Walker, and Brunton was grantee from Walker of the land subsequent to the mortgage. King had obtained judgment and an order for the sale of the land by *scire facias* proceedings, but no sale had been made? Williams insisted, that a merger had taken place by the *scire facias* proceedings so that King had no right to the possession of the land. While the attorneys for King insisted that the judgment in the *scire facias* of its own efficacy *without sale*, or *deed*, did not disturb or drown the lien created by the mortgage. And the court held that the mere obtaining of a judgment or decree did not extinguish the lien.

The court will observe, that this was a suit at law, for the sale of the land by *scire facias* under the statute, and not a foreclosure proceeding where the rule would be different, besides *no sale* had taken place, and it was nowhere contended or claimed, but what if a sale had taken place under the judgment that would have been the end of the lien and estate of the mortgagee.

Kruse *v.* Scripps, 11 Ill., 98, 104.

The plaintiff in this case derived title through a mortgage from Smith. The mortgage was foreclosed by *scire facias* the land sold, Kruse became the purchaser at the sale and received a sheriff's deed. Scripps derived title from a common source subsequent to the giving and recording of the mortgage, and the objection was made.

1st. That the description of the land in the mortgage was uncertain.

2d. That the mortgage was merged in the judgment in the *scire facias* proceedings and therefore could not be used as a link in the chain of title, and

3d. That the defendant was entitled to notice to quit, and the court held,

1st. That the land was sufficiently described.

2d. That the plaintiff might show that he derived title through the mortgage, and the mortgagee might be used for that purpose, and

3d. That defendant was not entitled to notice.

The case of Irving *v.* Brownell, 11 Ill., 402, was overruled by the case of Woodward *v.* Blanchard, 16 Ill., 425, and was held to be overruled in Rawson *v.* Fox, 65 Ill., 200, 207.

Collins *v.* Smith, 18 Ill., 160:

The question was whether in deraigning title through an administrator's sale of real estate and deed, made under an order of sale to pay debts, it was competent to prove by parole evidence a resulting trust by showing the purchase money belonged to Joseph, Wm., and Samuel McClintock, and that Thomas McClintock, who bid off the land, paid the money and received the deed, was acting as their agent, and if that could be done, whether the *cestui que trust* had such an equitable title deducable of record, as required by the statute.

Martin *v.* Judd, 81 Ill., 488:

Was an ejectment suit where the plaintiff title was a sheriff's deed by virtue of a sale of the land on execution against one who had a connected title of record to the premises from the United States. The defendant also derived his title through a subsequent sale, on another execution, issued on a junior judgment and a sheriff's deed, in pursuance of such sale, and the question was whether the defendant had a connected title in law deducable of record from the United States within the meaning of the Act of 1835, and the court held he did, and we do not see how it could have been held otherwise. It certainly was a good *prima facie* title and he could have recovered in ejectment, unless a bet-

ter title was shown, but there is no analogy between that case and the case at bar.

Chappell *v.* McKnight, 108 Ill., 570, 575:

In this case the court decides that although a contract for the purchase of land may be legal and binding, yet it does not follow that the vendee may enter into possession without an agreement with the vendor authorizing him to enter. *A mere contract or covenant* to convey at a future time on the purchaser performing certain acts does not create an equitable title. It is but an agreement which may ripen into an equitable title, and it is not until all the acts are performed which entitles him to a deed he has an equitable title, and may compel a conveyance. "When a purchaser is in a position to compel a conveyance by a bill in chancery, he then holds the equitable title."

Without consuming more of the court's time in reviewing authorities, we respectfully submit that the Supreme Court of Illinois made no error in its decision and that its judgment should be affirmed, or the writ dismissed in accordance with the practice of this court.

GEO. W. WALL,
E. A. WALLACE,
LYMAN LACEY, Jr.,
For Defendant in Error.

Supreme Court of the United States.

No. 243.—October Term, 1903.

Lydia Bradley, Plaintiff in Error, vs. H. W. Lightcap. } In error to the Supreme Court of the State of Illinois.

[May 31, 1904.]

Five ejectment suits were brought by Lightcap against tenants of Mrs. Bradley, July 13, 1895, in the Circuit Court of Mason County, Illinois, and taken on change of venue to Fulton County, where they were consolidated. Mrs. Bradley was let in to defend, and the case went to judgment in her favor. This judgment was reversed by the Supreme Court of Illinois, after several hearings, and the case remanded to the Circuit Court. 186 Ill. 510. On the retrial judgment was recovered by Lightcap, which was affirmed by the Supreme Court, 201 Ill. 511, and this writ of error prosecuted.

On the disposition of the case when brought to the Supreme Court the second time the division of opinion among the seven members of the court found expression. Mr. Chief Justice Magruder, Mr. Justice Carter and Mr. Justice Ricks concurred in the opinion of Mr. Justice Cartwright in affirmance of the judgment. Mr. Justice Wilkin and Mr. Justice Boggs filed dissents, and Mr. Justice Hand, while agreeing that the legal title was in Lightcap, was of opinion that the full beneficial interest was in Mrs. Bradley, and that she, being in possession, a court of chancery might protect her equitable interest and possession by enjoining the prosecution of the ejectment suit.

The facts are in substance these:

Tobias S. Bradley loaned T. B. Breedlove, June 3, 1867, $19,616, evidenced by notes payable in one, two, three, four and five years, respectively, and secured by a trust deed on 1,200 acres of land in Mason County, Illinois. On Bradley's death, Lydia, his widow, became the sole owner of the trust deed and notes. October 8, 1867, Breedlove conveyed the 1,200 acres to Prettyman, subject to the mortgage to Bradley. August 13, 1868, Prettyman conveyed 680 acres to McCune, and McCune gave a trust deed thereon to E. G. Johnson, trustee, to secure the payment of $15,000, evidenced by three notes, to the order of Lydia Bradley, and due in one, two and three years after date. Mrs. Bradley, through her agent, accepted these notes and trust deed as part payment of the Breedlove notes and Prettyman paid the difference, and the 1,200 acres were released from the Breedlove trust deed or mortgage.

November 13, 1868, McCune conveyed the 680 acres to Prettyman, subject to the trust deed to Johnson. No taxes were paid by McCune or by Prettyman, and no part of the mortgage debt was ever paid.

May 24, 1871, Mrs. Bradley redeemed from the tax sales for taxes of 1868 and 1869, and in 1872 for the taxes of 1871, and she has paid all other taxes assessed on the land since the trust deed or mortgage was given.

Early in the summer of 1871, Austin Johnson, whom Mrs. Bradley, in July, 1870, had appointed her business agent, went on the land on her behalf, and in 1872, Mrs. Bradley and Austin Johnson together went upon the land and she took personal and exclusive possession of it, which by herself and her tenants she has retained ever since.

February 22, 1872, Mrs. Bradley filed a bill in the Circuit Court of Mason County to set aside the release of the Breedlove trust deed or mortgage, on the ground of fraud, and for the foreclosure of that mortgage on the 1,200 acres for the payment of the balance of the original debt. McCune was a party but seems to have left the State and was brought in by publication. The bill was contested, and on August 22, 1879, the Mason Circuit Court entered a decree of foreclosure and sale on the McCune trust deed, finding the amount due Mrs. Bradley to be $31,500. The 680 acres were sold by the master in chancery, October 27, 1879, bid in for Mrs. Bradley for $10,000, and a certificate was issued to her.

Mrs. Bradley proceeded to develop and improve the 680 acres, drained the tract, erected farm buildings, laid tiles, reduced the land to cultivation, and has maintained exclusive possession to this date.

September 4, 1893, Prettyman gave a quitclaim deed of the land to Lightcap, which was recorded November 30, 1894. July 13, 1895, these actions in ejectment were commenced.

The McCune trust deed or mortgage was executed August 13, 1868, and at that time chapter 57 of the Revised Statutes of Illinois contained these sections:

"SEC. 12. Whenever any lands or tenements shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing the deed for the premises sold, to give to the purchaser or purchasers of such lands or tenements a certificate in writing describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is provided in this chapter, and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate, signed by him; and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

"SEC. 13. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold, by virtue of any execution within twelve months from such sale, to redeem such lands

or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted shall be null and void."

"SEC. 22. If such lands or tenements so sold, shall not be redeemed as aforesaid, either by the defendant or by such creditor as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer, who sold the same, or his successor in office, or his executors or administrators, to complete such sale, by executing a deed to the purchaser; . . ."

"SEC. 24. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors, administrators or grantors to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of executions issued upon judgments at common law, and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands, in like manner sold upon executions issued upon judgments at common law."

The statutes contained no limitation of time within which a sheriff's or master's deed must be taken after the period for redemption had expired, and prescribed no penalty or loss of right to the purchaser by reason of delay or failure in taking out such deed.

In *Rucker* v. *Dooley*, 49 Ill. 377, the Supreme Court of Illinois, at its September term, 1868, reasoning by analogy, held in an equity suit, as against a purchaser of real estate at an execution sale, who was never in its possession, and had no claim to it, except under his judgment and sale, and who had taken out a sheriff's deed twenty-nine years after the sale, and in favor of a *bona fide* purchaser, in possession, claiming by mesne conveyances from the judgment debtor, that for the protection of purchasers for a valuable consideration, without notice, from the judgment debtor, and those claiming under him, a sheriff's deed ought not to be issued after the lapse of twenty years, and that application for a deed made after the lapse of seven years, during which the judgment was a lien, and fifteen months, the time given for redemption, and within twenty years, should be made to the proper court by rule on the sheriff and notice to the parties interested.

March 22, 1872, an act of the general assembly of Illinois was approved, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree," which went into force July

1, 1872, the provisions of which were not materially different from those above quoted, but section 30 was as follows, the additions to former acts being indicated by italics:

"§ 30. When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor *at any time within five years from the expiration of the time of redemption.* The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. *If the time of redemption shall have elapsed before the taking effect of this act, a deed may be given within two years from the time this act shall take effect. When such deed is not taken within the time limited by this act the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed.*"

Mr. Chief Justice FULLER delivered the opinion of the Court:

Among the defences, it is stated Mrs. Bradley relied on, were that "under section 6 of chapter 83 of the Revised Statutes, in regard to limitations, the trust deed from McCune to Johnson, the decree of sale and certificate of purchase constituted color of title which, coupled with her possession and payment of taxes for seven successive years, made her the legal owner of the lands to the extent and according to the purport of her paper title;" that "under section 4 of the same act her possession and actual residence, through her tenants, for seven successive years, having a connected title in law or equity deducible of record from the United States, by virtue of the same trust deed, decree and sale, barred the action of plaintiff;" and "that she was mortgagee in possession after condition broken and entitled to possession as such." The Supreme Court of Illinois overruled all these defences, and held that when the sale was made under the decree and the mortgagee purchased at the sale, the mortgage was satisfied as to the land, and all rights of the mortgagee were represented by the certificate of purchase, and that, by force of the act of 1872, the mortgagee having failed to take the deed within the time limited by the statute, the certificate became null and void, her title terminated as it would on redemption, and she ceased to have any interest whatever in the premises, so that the mortgagor or his grantees, without any payment of the mortgage debt, was entitled to recover the possession from the mortgagee, in ejectment, on the strength of a perfect title.

Before and when the trust deed to Johnson, which may be treated as if a mortgage to Mrs. Bradley, was given, the legal title passed to the mortgagee according to the law of Illinois in respect of mortgages.

After condition broken the mortgagee became entitled to possession of the mortgaged premises and could maintain an action of ejectment. The mortgagor had only an equity of redemption, and in case of sale on foreclosure had by statute the right to redeem within twelve months by making full payment.

The law in general as it is to-day was thus declared in *Ware* v. *Schintz*, 190 Ill. 189, 193:

"Under the repeated rulings of this court a mortgagee, as against the mortgagor, is held, as in England, in law, to be the owner of the fee, having the *jus in re* as well as *ad rem*, and entitled to all the rights and remedies which the law gives to such owner, and may, after condition broken, maintain ejectment against the mortgagor. The mortgagor or his assignee, however, is the legal owner of the mortgaged estate as against all persons excepting the mortgagee or his assigns. *Delahay* v. *Clement*, 3 Scam. 201; *Vansant* v. *Allmon*, 23 Ill. 30; *Carroll* v. *Ballance*, 26 Id. 9; *Oldham* v. *Pfleger*, 84 Id. 102; *Fountain* v. *Bookstaver*, 141 Id. 461; *Esker* v. *Heffernan*, 159 Id. 38. The fee title held by the mortgagee is in the nature of a base or determinable fee. The term of its existence is measured by that of the mortgage debt. When the latter is paid or becomes barred by the statute of limitations the mortgagee's title is extinguished by operation of law. *Pollock* v. *Maison*, 41 Ill. 516; *Harris* v. *Mills*, 28 Id. 44; *Gibson* v. *Rees*, 50 Id. 383; *Barrett* v. *Hinckley*, 124 Id. 32; *Lightcap* v. *Bradley*, 186 Id. 510. Until it is extinguished the legal title is in the mortgagee for the purpose of obtaining satisfaction of his debt."

The condition of the McCune mortgage was broken as soon as made by failure to pay taxes previously and then due, and again by failure to pay the notes maturing in 1869, 1870 and 1871, and Mrs. Bradley entered into peaceable possession of the tract of six hundred and eighty acres before the act of 1872 took effect. If the assent of the mortgagor was necessary, which we do not hold it was, it should be implied in the circumstances. Her possession was that of mortgagee in possession, and she could defend as against the owner of the equity of redemption any action except for an accounting of the rents and profits, and to redeem. And as she could pursue concurrent remedies the character of her possession was not affected by the filing and pendency of the bill to set aside the release of the Breedlove mortgage. But that bill went to decree in 1879 of foreclosure of the McCune mortgage by sale, and sale was had. There was no independent purchaser, nor was the whole amount of the mortgage debt bid, but Mrs. Bradley, the mortgagee in possession, bid about one-third of the amount due. By the statute the right of redemption of McCune and his grantee was barred and determined October 27, 1880, at the expiration of twelve months from the date of sale, and so it was by the express provision of the decree of foreclosure.

The certificate of purchase was issued to Mrs. Bradley, but it does not appear that she obtained a deed. It is assumed, and we assume, that she

did not, although it is suggested that after the lapse of so many years, and under the circumstances, in an action at law by the original mortgagor against the mortgagee in possession, an irrebutable presumption of a deed arises on grounds of public policy.

The Supreme Court of Illinois in the present case decides that the act of 1872 applies to mortgagees in possession, and that it operates not simply as a statute of limitations on the right to obtain a deed, but in effect as a statute forfeiting, by the nullification of the certificate, the mortgagee's estate and right of possession by reason of *laches*, and means that if a deed be not taken out within the time specified, the mortgagee has lost his debt and the mortgagor has been reinstated in his former title by operation of law, and without having paid anything in redemption. Accepting the construction of the act by the State court, and its conclusion that it applies to Mrs. Bradley, then the question is whether such a statute so applied does not impair the obligation of the contract previously existing between the mortgagee and the mortgagor, or deprive the mortgagee of property rights without due process. That question was raised in the Supreme Court of Illinois, and the court held that it did not. 201 Ill. 511.

Confessedly subsequent laws, which in their operation amount to the denial of rights accruing by a prior contract, are obnoxious to constitutional objection.

In *Bronson* v. *Kinzie*, 1 How. 311, the statute objected to gave the mortgagor twelve months to redeem after the sale, and Mr. Chief Justice Taney said:

"It declares that, although the mortgaged premises should be sold under the decree of the Court of Chancery, yet that the equitable estate of the mortgagor shall not be extinguished, but shall continue for twelve months after sale; and it moreover gives a new and like estate, which before had no existence, to the judgment creditor to continue for fifteen months. If such rights may be added to the original contract by subsequent legislation, it would be difficult to say at what point they must stop. . . . Any such modification of a contract by subsequent legislation, against the consent of one of the parties, unquestionably impairs its obligations; and is prohibited by the Constitution."

In *Barnitz* v. *Beverly*, 163 U. S. 118, it was held that a State statute which authorized redemption of property sold in foreclosure of a mortgage where no such right previously existed, or extended the period of redemption beyond the time previously allowed, could not apply to a sale under a mortgage executed before its passage, and Mr. Justice Shiras, referring to *Brine* v. *Insurance Company*, 96 U. S. 627, 637, said:

"But this court held, through Mr. Justice Miller, that all the laws of a State existing at the time a mortgage or any other contract is made, which affect the rights of the parties to the contract, enter into and become a part of it, and are obligatory on all courts which assume to give a remedy on such contracts, . . . that it is therefore said that these laws enter into

and become a part of the contract"—and that "'the remedy subsisting in a State when and where a contract is made and is to be performed is a part of the obligation.'" . . .

"What we are now considering is, whether the change of remedy was detrimental to such a degree as to amount to an impairment of the plaintiff's right; and, as this record discloses that the sale left a portion of the plaintiff's judgment unpaid, it may be fairly argued that this provision of the act [which provided that the land 'shall not again be liable for sale for any balance'] does deprive the plaintiff of a right inherent in her contract.

"When we are asked to put this case within the rule of those cases in which we have held that it is competent for the States to change the form of a remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired, we are bound to consider the entire scheme of the new statute, and to have regard to the probable effect on the rights of the parties."

In *Hooker* v. *Burr*, 194 U. S. , these and many other cases were considered, and the distinction was pointed out between a purchase by the mortgagee and by an independent purchaser, having no connection whatever with the original contract between the mortgagor and mortgagee, and whose contract was made under the law as then existing; as well as the distinction where the mortgagee bids the whole amount of the mortgage debt, as in *Connecticut Life Insurance Company* v. *Cushman*, 108 U. S. 51, which was cited with approval. There the company bid enough to pay the full amount of the mortgage debt, principal and interest, and on redemption contended that it was entitled to interest at the rate existing at the time of the execution of the mortgage, which had been reduced before the sale, though subsequent to the mortgage. *Barnitz* v. *Beverly*, was distinguished. In that case the sum bid at the foreclosure sale did not equal the amount due on the mortgage, the debt of the mortgagor was not thereby paid, and it was the mortgagee's rights under her contract as contained in the mortgage, and not her rights as a purchaser, that were in controversy. In the Cushman case, on the contrary, the amount bid at the foreclosure sale paid the mortgage debt, and the subsequent position of the mortgagee was as a purchaser only.

And we said: "If the mortgage had been foreclosed and the mortgagee had thereby realized his debt, principal and interest in full, upon the sale, there can be no doubt that he would not have been heard to assert the invalidity of the subsequent legislation, nor would an independent purchaser at the sale have been heard to make the same complaint. Of course, this does not include the case of a mortgagee who purchases at the foreclosure sale and bids a price sufficient to pay his mortgage debt in full with interest, and an action thereafter commenced against him to set aside the sale because it was made in violation of legislation subsequent to the mortgage. In such case we suppose there can be no doubt of the right of the mort-

gagee to assert, as a defence to the action, the unconstitutionality of the subsequent legislation as an impairment of his contract contained in the mortgage."

In Illinois the legal title vests in the mortgagee, but in equity that title is regarded as a trust estate to secure the payment of the money, and where the mortgaged premises are bid off by the mortgagee, at foreclosure sale, for the full amount of the decree, interest and costs, the mortgage may be held to have expended its force, but where the bid is for less than the full amount, a different rule would be applicable. *Bogardus* v. *Moses*, 181 Ill. 554, 559, 560.

Entitled to pursue different remedies to collect the mortgage debt or to free the mortgaged premises of the right of redemption, foreclosure and sale, purchase and deed are in aid of the original title and not inconsistent with it. *Williams* v. *Brunton*, 3 Gilm. (Ill.) 600. If the right of redemption is determined by efflux of time, which must be before a deed can issue, failure to take out the deed either has no effect so far as the mortgagor is concerned because he is not injured, or the right of redemption still remains and all the mortgagor can claim is that the relation between the parties is unchanged.

In the present case there was no independent purchaser; the bid of the mortgagee was less than one-third of the amount found due; there was no redemption and the right of redemption was cut off; the mortgagee was in possession before and at the time of foreclosure and sale, and when ejectment was brought sixteen years thereafter, and the mortgage debt had never in fact been paid; so that the original mortgagor as plaintiff in ejectment could not recover unless by the subsequent law the mortgagee had been subjected to the loss of all her rights, as against him, by *laches* in obtaining a deed, although as a general rule *laches* are not imputable to a party in possession to the loss of the right thereto.

And if the operation of the subsequent law is to impair the obligation of Mrs. Bradley's mortgage contract or to deprive her of rights protected by the Constitution, we cannot decline jurisdiction because of a construction that we deem untenable, *Louisville Gas Company* v. *Citizens' Gas Light Company*, 115 U. S. 683, 697; *Terre Haute & Indianapolis Railroad Company* v. *Indiana*, 194 U. S.

By the judgment in this case Lightcap has been held clothed with the legal title and the immediate right of possession. And this on the ground that the certificate of purchase discharged the McCune mortgage and that the act of 1872 nullified the certificate after the lapse of five years. This gave to the limitation of time for taking out the deed the effect of destroying the right of possession taken under the mortgage, wiping out the mortgage with the certificate, and allowing the mortgagor to assert the legal title and right of possession as against the mortgagee as a wrong-

doer. That is to say, though Mrs. Bradley was rightfully in possession and though the mortgage debt had not in fact been paid, the bar of the statute as to the deed is held to be efficacious in turning Mrs. Bradley into a trespasser as respects the mortgagor, who, not having in fact paid anything, is treated as having made payment by the mortgagee's bid, and being at the same time entitled to assert the failure of the purchase by reason of *laches* in taking out the deed.

And yet because a statute may take away the sword which a deed would give a mortgagee out of possession, it does not follow that it can lawfully operate on prior transactions so as to take away the shield afforded by possession. Rightful possession is a defense in ejectment, *Sands* v. *Wacaser*, 149 Ill. 530, 533, and cases cited, and Mrs. Bradley's possession could only be treated as wrongful as against the original mortgagor by the application of the subsequent law.

As we have said, when Mrs. Bradley took this mortgage there was no statutory limitation as to the time within which a master's deed must be taken out, and no loss of right by reason of failure to do so was prescribed. After she had filed her bill, and while she was in possession, the act of 1872 went into effect, and, it may be conceded, limited Mrs. Bradley's right to obtain a deed on foreclosure sale and so far affected any remedy through a deed she might have had. But, reading the act, as the view of the Supreme Court compels us to do, as taking away her right to maintain her possession, we are of opinion that it materially impairs the obligation of her contract, and deprives her of property without due process.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.

No. 306.

Lydia Bradley, Plaintiff in Error, *vs.* H. W. Lightcap. } In error to the Supreme Court of the State of Illinois.

[May 31, 1904.]

Mr. Chief Justice FULLER delivered the opinion of the Court:

After the decision reported 186 Ill. 510, Mrs. Bradley filed her bill in equity in the Circuit Court of Fulton County, Illinois, to quiet her title to the land in controversy in the action in ejectment and for appropriate relief. The bill was dismissed on demurrer and Mrs. Bradley carried the case to the Supreme Court of Illinois, which affirmed the decree below. *Bradley*

v. *Lightcap*, 202 Ill. 154, April 24, 1903. Three of the members of the court dissented. The opinion of the Supreme Court proceeded on the strength of the decisions in 186 Ill. 510, and 201 Ill. 511.

As we have reversed the judgment in the prior case, this case must take the same course.

Decree reversed and cause remanded for further proceedings not inconsistent with our opinion in No. 243.

No. 343.

Lydia Bradley, Appellant, *vs.* H. W. Lightcap. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[May 31, 1904.]

Mr. Chief Justice FULLER delivered the opinion of the Court:

This was a bill filed by Mrs. Bradley, to quiet her title to the premises in controversy in No. 243, and for appropriate relief, in the Circuit Court of the United States for the Northern District of Illinois, and was dismissed for want of jurisdiction, May 22, 1902.

The Circuit Court, Grosscup J., was of opinion that the statute of 1872 was not one of limitation in the same sense as a statute limiting the time within which foreclosure proceedings must be brought; that the failure to take out the deed within five years raised no presumption that the mortgage debt had been paid; and that the act was, in effect, simply a limitation on the time within which the foreclosure decree could be availed of, and did not operate to forfeit the mortgagee's title to the mortgagor if the deed were not taken out. But he thought that Mrs. Bradley's title by possession as mortgagee had not been held by the State court to have been cut off by the statute of 1872, as the record in that court stood, as reported in 186 Ill. 510, and that, therefore, the constitutional question did not arise. If, however, the Supreme Court had ruled that her title as mortgagee in possession had been so destroyed, the remedy was by writ of error from the Supreme Court of the United States. The decision in 201 Ill. 511, was rendered February 18, 1903. Taking into view the controversy as presented in the two other cases, and that the judgments in those cases are now directed to be reversed, and bearing in mind that a case does not necessarily arise under the Constitution or laws of the United States every time a writ of error would lie to the judgment of the State court, the decree of the Circuit Court will be

Affirmed.